Volume A.

(PLEADINGS, ORDERS, ETC.)

71921

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1911.

No. 451.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED [illegible], 1911.

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1 UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 883. Equity.

Pleas before the honorable the judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division, of the June, A. D. 1910, term of said court, held in said district in the year of our Lord one thousand nine hundred and ten (1910).

DISTRICT OF MINNESOTA:

Be it remembered that on the 1st day of October, A. D. 1908, came the complainants, by their solicitors and counsel, and filed in the clerk's office of said court their bill of complaint, which is omitted from this return in view of the subsequent filing of an amended bill of complaint.

And thereupon, upon application of said solicitors, a writ of subpœna was duly issued out of said court and under the seal thereof duly vested, and in the words and figures following, to wit:

2 Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION.

Præcipe for chancery subpœna.

To the clerk of the above-named court:

Please issue chancery subpœna directed to the above-named defendant, returnable November rules, 1908.

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Solicitors for Complts.

(Endorsed:) Præcipe for chancery subpœna. Filed October 1st, 1908. Henry D. Lang, clerk.

3 United States Circuit Court, District of Minnesota, Third Division.

Chancery common rule and order book.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } Equity. No. 883.

1910. Oct. 1st.

The complainants herein having filed a bill in equity in this cause, on application of F. C. Dillard, James B. Kerr, and Hale Holden, solicitors for said complainants, it is hereby ordered that a chancery subpœna issue as therein prayed.

(Entered, C. R. "C," page 8.)

4 (Original.)

United States of America, District of Minnesota, Third Division.

The President of the United States of America to the Interstate Commerce Commission greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the Circuit Court of the United States for the District of Minnesota, on the first Monday of November next, at the city of St. Paul, then and there to answer the bill of complaint of Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, citizens of the States of Utah, Oregon, Kentucky, Wisconsin, Minnesota, and Illinois, filed against you on the 1st day of October, A. D. 1908; hence fail not.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 1st day of October, 1908. Issued at my office, in the city of St. Paul, under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL OF COURT.] HENRY D. LANG, *Clerk*,
By ——— ———, *Deputy*.

Memorandum: The above-named defendant to enter its appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk*,
By ——— ———, *Deputy*.

F. C. DILLARD,
JAMES B. KERR, and
HALE HOLDEN,
Complainants' Solicitors.

(Indorsed:) Served copy of within writ on within-named defendant by service on E. A. Moseley, its secretary. Oct. 3, 1908. Aulick

Palmer, U. S. marshal, Dist. of Columbia. No. ——. United States Circuit Court, District of Minnesota, —— Division. ——— vs. ——— Chancery subpœna. (Original.) Returnable to November Rules, 1908. Filed October 8th, 1908. Henry D. Lang, clerk. ——— ———, Complainants' solicitor.

5 Thereafter and on October 12th, 1908, the following præcipe for appearance and order of appearance on behalf of defendant were filed and entered of record in said cause, to wit:

6 Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC R. R. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 883.

Appearance.

The clerk will enter my appearance for the defendant in above-entitled case.

LUTHER M. WALTER.

(Indorsed:) United States Circuit Court, District of Minnesota, —— Division. ——— vs. ———. Appearance of Luther M. Walter for deft. Filed October 12th, 1908. Henry D. Lang, clerk, by Louise B. Trott, deputy.

7 United States Circuit Court, District of Minnesota, Third Division.

Chancery rule and order book.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 883. Equity.

Oct. 12.

This day comes the defendant, by Luther M. Walter, solicitor, on whose motion it is hereby ordered that the appearance of said defendant be, and the same is hereby, entered.

(Entered, C. R. "C," page 140.)

Thereafter and on October 16th, 1908, the following certificate of the Attorney General was filed in said cause, to wit:

8 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILROAD COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

To the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the Union Pacific Railroad Com-

pany et al. against the Interstate Commerce Commission, under the act of Congress entitled "An act to regulate commerce," as amended by the act of June 29, 1906, and that said suit is, in my opinion, a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies'; 'An act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted," approved February 11, 1903; and in further compliance with the provisions contained in section 16 of the "Act to regulate commerce," approved June 29, 1906, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Eighth Circuit, to the end that said case shall be given precedence over other cases in said court, and will be assigned for hearing at the earliest practicable date before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney General.

WASHINGTON, D. C., *October 13, 1908.*

9 (Endorsed:) Certificate of the Attorney General under the acts of February 11th, 1903, and June 29th, 1906. Filed October 16th, 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following certificate of Henry D. Lang, clerk, was filed in said cause, to wit:

10 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that on the 16th day of October, A. D. 1908, I personally handed to and left with the Honorable Walter H. Sanborn, one of the United States circuit judges for the Eighth Circuit, at St. Paul, Minnesota, a duly certified copy of the certificate of the Attorney General, under the acts of February 11th, 1903, and June 29th, 1906, this day filed in the above-entitled cause; and that on the same day I mailed a certified copy to the Honorable Willis Van Devanter by enclosing a copy thereof in

an envelope addressed to him at Cheyenne, Wyoming, and depositing the same in the post office at St. Paul, Minnesota; and that on the same day I also mailed a duly certified copy of said certificate to the Honorable Elmer B. Adams by enclosing the same in an envelope addressed to him at St. Louis, Missouri, and depositing the same in the post office at St. Paul, Minnesota; and that on the same day I also mailed a duly certified copy of said certificate to the Honorable William C. Hook by enclosing the same in an envelope addressed to him at Leavenworth, Kansas, and deposit*ed*ing the same in the post office at said St. Paul, Minnesota.

In witness whereof, I have hereunto set my hand and official seal this 16th day of October, A. D. 1908.

HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of Henry D. Lang, clerk, of delivery of Attorney General's certificate to U. S. circuit judges. Filed October 16th, 1908. Henry D. Lang, clerk.

11 Thereafter and on October 16th, 22nd, and 27th the following receipts of the U. S. circuit judges were filed in said cause, to wit:

12 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

Received of Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, a certified copy of the certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29th, 1906, filed in the above-entitled cause October 16th, 1908.

Dated October 16th, 1908.

WALTER H. SANBORN, *Circuit Judge.*

(Endorsed:) Receipt of Hon. Walter H. Sanborn for Attorney General's certificate. Filed October 16th, 1908. Henry D. Lang, clerk.

13 United States Circuit Court of Appeals, Eighth Circuit.

Hon. David J. Brewer, circuit justice, Washington, D. C.; Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. Willis Van Devanter, Cheyenne, Wyo.; Hon. William C. Hook, Leavenworth, Kan.; Hon. Elmer B. Adams, St. Louis, Mo., circuit judges.

ST. LOUIS, MO., *Oct. 20, 1908.*

HENRY D. LANG, Esq.,
Clerk United States Circuit Court, St. Paul, Minnesota.

DEAR SIR: I beg to acknowledge receipt of your letter of October 16th, with enclosures. I see no occasion for accepting service in the manner suggested by some of your enclosures as if the proceeding were a suit against the judges individually.

Very respectfully, yours, ELMER B. ADAMS.

(Endorsed:) Receipt of Judge Elmer B. Adams for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

14 ST. LOUIS, MISSOURI, *October 19, 1908.*

Mr. HENRY D. LANG, *Clerk, St. Paul, Minnesota.*

DEAR SIR: I am in receipt of yours of the 16th inst., enclosing copies of the certificates of the Attorney General in the three cases, Union Pacific Railroad Co., Northern Pacific Railway Co., and Great Northern Railway Co., against The Interstate Commerce Commission, Nos. 883, 884, and 885, in the Circuit Court for the Minnesota District.

Very truly, WILLIAM C. HOOK.

(Endorsed:) Receipt of Judge Wm. C. Hook for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

15 ST. PAUL, *October 16th, 1908.*

Hon. WILLIS VAN DEVANTER,
U. S. Circuit Judge, Cheyenne, Wyo.

MY DEAR JUDGE: I hand you herewith a certified copy of the certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29, 1906, filed to-day in each of the cases of 883, equity, Union Pacific Rd. Co. et al. vs. Interstate Commerce Commission; 884, equity, Northern Pacific Railway Co. et al. vs. Interstate Commerce Commission; and 885, equity, Great Northern Railway Co. et al. vs. Interstate Commerce Commission, together with a receipt for each, which kindly sign and return to me.

Yours, very truly,

HENRY D. LANG, *Clerk.*

Dictated.

ST. PAUL, *Oct. 28, 1908.*

The above enclosures were received by me to-day, the same having been forwarded from Cheyenne.

WILLIS VAN DEVANTER.

(Endorsed:) Receipt of Judge Van Devanter for certificate of Attorney General. Filed October 27th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

And on October 20th the following amednd bill of complaint was in said cause, to wit:

In the Circuit Court of the United States for the District of Minnesota. Third Division.

Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burington and Quincy Railroad Company, and Oregon and California Railroad Company, complainants, *vs.* The Interstate Commerce Commission, defendant.	In equity.	No. 883.

Amended bill of complaint.

To the honorable judges of the Circuit Court of the United States within and for the District of Minnesota:

Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah;
17 Oregon Railroad and Navigation Company, a corporation organized under the laws of the State of Oregon; Southern Pacific Company, a corporation organized under the laws of the State of Kentucky; Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin; Great Northern Railway Company, a corporation organized under the laws of the State of Minnesota; Chicago, Burlington and Quincy Railroad Company, a corporation organized under the laws of the State of Illinois; and Oregon and California Railroad Company, a corporation organized under the laws of the State of Oregon, bring this, their amended bill, against the Interstate Commerce Commission, established and existing under and by virtue of an act of the Congress of the United States.

And thereupon your orators complain and say:

I.

That the Union Pacific Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Short Line Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Railroad and Navigation Company is a corporation duly organized and existing under the laws of the State of Oregon; that the Southern Pacific Company is a corporation duly organized and

existing under and by virtue of the laws of the State of Kentucky; that the Northern Pacific Railway Company is a corporation duly organized under and by virtue of the laws of the State of Wisconsin; that the Great Northern Railway Company is a corporation duly organized and existing under the laws of the State of Minnesota; that the Chicago, Burlington and Quincy Rail-
18 road Company is a corporation duly organized and existing under the laws of the State of Illinois; and that the Oregon and California Railroad Company is a corporation duly organized and existing under the laws of the State of Oregon; that the defendant, The Interstate Commerce Commission, has been created and established, and during all the times herein mentioned has existed under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof.

Your orators further show that the Northern Pacific Railway Company has its principal operating office in the city of St. Paul, in the District of Minnesota, Third Division thereof.

II.

Your orators further show that the Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company are each common carriers, engaged in the transportation of property by railroad, by continuous carriage or shipment, from points in the State of Oregon to points in the State of Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Iowa, Missouri, Kansas, Nebraska, Utah, and Colorado, and have been so engaged for many years past, and a large proportion of the property so transported by your orators is and has been lumber,
19 shingles, and other forest products produced at points in the State of Oregon; that for the purpose of transporting the lumber, shingles, and other forest products so produced in the State of Oregon to points of consumption in the States above named your orators have established and maintained through routes and joint rates over their lines and the lines of connecting railways from said points in the State of Oregon to destinations in said other States.

III.

The rates for the transportation of lumber, shingles, and forest products from points in the State of Oregon over the lines of your orators' railways to points thereon in the States above mentioned and to points in said States and other States over lines of connecting railways, which rates were in effect on October 31, 1907, and which had been in effect for a long time before that date, were prescribed

in certain tariffs duly filed, published, and posted under the provisions of the act entitled "An act to regulate commerce." These tariffs are known and described as follows: S. R. 662, I. C. C. No. 564; G. N. G. F. O. 9838, I. C. C. No. A 1101; G. N. G. F. O. 13051, I. C. C. No. A 1427; G. N. G. F. O. 17526, I. C. C. No. A 2231; G. N. G. F. O. 18025, I. C. C. No. A 2427; G. N. G. F. O. 18837, I. C. C. No. A 2661; Northern Pacific No. 23275, I. C. C. No. A 3095; and Northern Pacific No. 20285, I. C. C. No. B 479, and are too voluminous to be set out in this amended bill of complaint, but true copies thereof have been filed in cause No. 884, entitled "Northern Pacific Railway Company and others v. The Interstate Commerce Commission," heretofore filed and now pending in this court, and reference thereto for convenience is hereby prayed as if the same
20 were made a part of this amended bill of complaint and filed herewith, the said tariffs being marked, respectively, Exhibits 1 to 8, inclusive.

IV.

That more than thirty days previous to November 1, 1907, your orators, together with a large number of other carriers, filed, published, and posted, in accordance with the provisions of that certain act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof, a certain tariff known as "Transcontinental Freight Bureau East-bound Special Tariff No. S. R. 963, I. C. C. No. 850," with Supplements 1 and 2, which became effective November 1, 1907, wherein rates were prescribed for the transportation of lumber, shingles, and forest products from points in the State of Oregon to points in North Dakota, Montana, Wisconsin, Iowa, Illinois, Missouri, Nebraska, Arkansas, Louisiana, Texas, Oklahoma, New Mexico, Colorado, Kansas, Utah, and Wyoming, and at or about the same time your orator, Great Northern Railway Company, filed, published, and posted, under the provisions of said act of Congress, a certain local and joint tariff known as "Great Northern I. C. C. No. A–2667," which prescribed the rates for the transportation of lumber, shingles, and forest products from points in the State of Oregon to points in Oregon, Washington, Idaho, Montana, Alberta, and British Columbia, which said tariff, and the rates therein prescribed, became effective on November 1, 1907. And at or about the same time your orator, Northern Pacific Railway Company, filed, published, and posted a certain local and joint tariff prescribing rates for the transportation of lumber,
21 shingles, and forest products from points in the State of Oregon to points in Idaho, Montana, and North Dakota, which rates became effective on November 2, 1907, said tariffs being I. C. C. No. A–3432.

That said tariffs above described are too voluminous to be set out in this amended bill of complaint; that true copies thereof have been filed in said cause No. 884, entitled "Northern Pacific Railway Company et al. against The Interstate Commerce Commission," heretofore

referred to, and reference thereto is hereby prayed as if the same were made a part of this amended bill of complaint, the said tariff I. C. C. No. 850 being marked "Exhibit 9," the said tariff I. C. C. No. A-2667 being marked "Exhibit 10," and the said tariff I. C. C. No. A-3432 being marked "Exhibit 11."

That in and by said tariffs so filed, published, and posted the articles or commodities therein described were designated as groups A, B, C, and D, and by the terms thereof group A comprised shingles; group B comprised lumber, poles, piling, and timbers of cedar of single-car lengths, and certain articles manufactured from cedar; group C comprised lumber, poles, piling, and timbers of fir, hemlock, larch, pine, and spruce of single-car lengths and certain articles manufactured therefrom; and group D comprised long timbers, poles, piling, or lumber requiring two or more cars for transportation.

V.

That the rates named in said tariffs so filed, published, and posted thereupon became, were, and are the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all of the points in the State of Oregon named in said tariffs to each and all of the points of destination in said other States named in said tariffs, and said rates, and each and all of them, were, on November 1st, 1907, ever since have been, and now are low for the service rendered and by comparison with other rates, and as such neither unreasonable nor unjust, and, as your orators verily believe, will continue so to be for the period of two years from October 15, 1908.

VI.

That as soon as the said rates prescribed by the tariffs above mentioned became effective, a certain proceeding was commenced before the Interstate Commerce Commission, entitled "Oregon and Washington Lumber Manufacturers' Association and others v. Union Pacific Railway Company and others," being cause No. 1327 before said commission. In said cause No. 1327, the Oregon and Washington Lumber Manufacturers' Association and others complained against your orators and other carriers, parties to said tariffs, and alleged that they were engaged in the manufacture and interstate shipment and sale of lumber, shingles, and other forest products from points within to points without the State of Oregon, the rates on which were fixed by said tariffs, and alleged that the rates fixed therein for the transportation of such commodities were unreasonable and unjust. Upon the filing of the complaint in said cause, the defendant Interstate Commerce Commission required your orators and the other carriers named as defendants in said proceedings to answer the complaints of said complainants, and thereupon answers were duly filed by your orators, and upon the issues raised therein evi-

dence was produced before the said Interstate Commerce Com-
23 mission by such complainants and by your orators, and the matters in difference in said cause were submitted to the commission on March 21, 1908.

VII.

Thereafter, and on June 2, 1908, the defendant Interstate Commerce Commission entered an order in said cause No. 1327, which order was in words and figures as follows:

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1327.

Oregon & Washington Lumber Manufacturers' Association; Eastern & Western Lumber Company; Curtiss Lumber Company; Clark & Wilson Lumber Company; Portland Lumber Company; Peninsular Lumber Company; Tongue Point Lumber Company; Booth-Kelly Lumber Company; North Pacific Lum-
24 ber Company; Bridal Veil Lumbering Company; and Stanley Smith Lumber Company

v.

Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Astoria & Columbia River Railroad Company; Oregon & California Railroad Company; and Corvallis & Eastern Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon, to which report reference is hereby made:

It is ordered that the said defendants, Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; Great Northern Railway Company; Chi-

cago, Burlington & Quincy Railroad Company; Astoria & Columbia River Railroad Company; Oregon & California Railroad Company; and Corvallis & Eastern Railroad Company, and each of them, be, and they are hereby, notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present rates on interstate shipments of lumber, shingles, and other forest products, from points of origin in Oregon, Washington, Idaho, Montana, and British Columbia to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054,
25 Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al., decided June 2, 1908.

It is further ordered that said defendants, and each of them, be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, rates on said interstate shipments of lumber, shingles, and other forest products from said points of origin to said points of destination which shall in no instance exceed the rates on like shipments between the same points which had been duly filed with the commission as required by law and which were in effect immediately prior to November 1, 1907, subject to present minimum weight regulations and the following limitations:

The rates on said lumber, shingles, and other forest products from said points of origin to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak.; Moorhead and Breckenridge, Minn.; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Mo., and thence to Porth Arthur, Tex., along the Kansas City Southern Railway, also including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding those points to which rates are prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al., decided June 2, 1908, which were in effect immediately prior to November 1, 1907, shall be restored, except that the differentials prescribed in case No. 1348, Potlatch Lumber Co. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, shall be observed; the rates which were in effect immediately prior to November 1, 1907, from said points of origin to points east of the line mentioned, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux
26 City, Iowa, and Kansas City, Mo., may be increased, in no case exceeding 5 cents per 100 pounds, and subject to the differentials prescribed in said case No. 1348.

This case will be held open for such supplemental proceedings as it may be necessary for interested parties to institute in respect to reparation.

VIII.

Your orators further show that in said cause numbered 1327, wherein the Oregon and Washington Lumber Manufacturers' Association and others are complainants, and your orators are defendants, the said defendant Interstate Commerce Commission on July 27, 1908, by order duly entered, changed, and extended the effective date of said order from August 15 to October 15, 1908, and again, on September 1, 1908, said defendant commission entered in said cause a further order as follows, to wit:

Upon further consideration of the record in the above entitled cause,

It is ordered that the order heretofore entered by the commission in said cause on the second day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15th to October 15th, 1908, be, and the same is, hereby further modified and amended by adding thereto the following:

It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina–Port Arthur line, as defined in the original order herein, as to which no such differential, or a differential of less than 10 cents per 100 pounds, existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above rates on fir lumber between the same points, provided that the differentials pre-
27 scribed in case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer.

IX.

Your orators further show that in said cause numbered 1327, wherein the Oregon and Washington Lumber Manufacturers' Association and others are complainants, and your orators are defendants, the said defendant Interstate Commerce Commission, on September 25, 1908, made a further order as follows, to wit:

Upon further consideration of the record in the above-entitled cause,

It is ordered that the order of September 1, 1908, modifying the original order herein, be, and it is hereby, amended and modified so that it will read as follows:

It is ordered that the order heretofore entered by the commission in said cause on the 2d day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15 to October 15, 1908, be, and the same is, hereby further modified and amended by adding thereto the following:

It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina–Port Arthur line, as defined in the original order herein, as to which no differential, or a differential of less than 10 cents per 100 pounds, existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials pre-
28 scribed in case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

It is further ordered that all increases made under this order in said differentials above those in effect on October 31, 1907, shall become effective on October 15, 1908, and that as to all shipments which moved subsequent to October 31, 1907, and prior to October 15, 1908, the rates prescribed in the original order herein shall be applied.

It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer.

X.

Your orators further show that the orders in cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and in cause No. 1331, entitled "Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al.," and in cause No. 1348, entitled "Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al.," referred to in the order so entered by the defendant commission in cause 1327, are as follows, to wit:

29 Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

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No. 1054.

PACIFIC COAST LUMBER MANUFACTURERS' ASSOCIATION; SOUTHWESTERN Washington Lumber Manufacturers' Association; and Shingle Mills Bureau,

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY Company; Northern Pacific Terminal Company of Oregon; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Oregon & California Railroad Company; Southern Pacific Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Colorado Midland Railway Company; Colorado & Southern Railway Company; Chicago, Burlington & Quincy Railway Company; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Missouri Pacific Railway Company; Leavenworth, Kansas & Western Railway
30 Company; St. Joseph & Grand Island Railway Company; Kansas City Northwestern Railroad Company; and Chicago & Northwestern Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered that the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, and the Union Pacific Railroad Company, be, and they are hereby, notified and required to establish, on or before the 15th day of August, 1908, between their respective lines of transportation and maintain in operation for a period of not less than two years from said 15th day of August, through routes for the transportation of fir lumber, cedar lumber, spruce lumber, and shingles from points on the lines of the Northern Pacific Railway Company in Washington north of Portland, Ore., through said Portland to Ogden and Salt Lake City, Utah, and common points in Utah; and are also required to establish and put in force, on or before the said 15th day of August, and for a period of at least two years thereafter maintain a joint through rate not exceeding 40 cents per 100 pounds in carloads for the transportation of fir lumber and spruce lumber between said points, and a rate not exceeding 50 cents per 100 pounds in carloads for the transportation of cedar lumber and shingles between said points; and the said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain the notation that it is issued under the

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31 authority hereby granted, and must refer to the title and number of this case.

It is further ordered that as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland over the lines of the Northern Pacific Railway Company and the Great Northern Railway Company and the Union Pacific system to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION; Willamette Valley Lumber Company; Falls City Lumber Company; Curtiss Lumber Company; Charles K. Spaulding Logging Company; Booth-Kelly Lumber Company; J. H. Chambers; H. M. Parvin; and Cruzan Brothers, complainants; and Inman-Poulsen Lumber Company; Oregon & Washington Lumber Company;

32 East Side Mill & Lumber Company; Standard Box and Lumber Company; Jones Lumber Company; and St. Johns Lumber Company, interveners.

v.

SOUTHERN PACIFIC COMPANY AND OREGON & CALIFORNIA RAILROAD Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Southern Pacific Company and the Oregon & California Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough, green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the State of Oregon, and upon the west bank thereof south of Corvallis, Oreg., and upon the west bank of said river north of said Corvallis, to San Francisco, Cal., and bay points.

It is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the

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said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough, green fir lumber and lath, in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River and upon the west bank thereof south of said Corvallis, to San Francisco, Cal., and bay points; and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of
33 said Corvallis, to said San Francisco and bay points, not including in either rate Portland, Oreg., as a point of origin.

And it is further ordered, That said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of complying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1348.

Potlatch Lumber Company; St. Joe Lumber Company; B. R. Lewis Lumber Company; McGoldrick Lumber Company; Lamb-Davis Lumber Company; Fidelity Lumber Company; Washington Mill Company; Orrin S. Good; National Lumber Company; Cascade Lumber Company; Springton Lumber Company; Wm.
34 Musser Lumber & Manufacturing Company; Phoenix Lumber Company; Standard Lumber Company; Karamin Lumber Company; E. A. Humphrey and J. R. Humphrey, partners doing business under the name of the Elkhorn Saw Mills; Buckeye Lumber Company; Lindsley Brothers Company; W. H. Gerhart-Braddock Lumber Company, a co-partnership composed of W. H. Gerhart and A. V. Bradrick; S. H. & L. Lumber Company, a co-partnership composed of G. W. Shaw, J. J. Herlihy, and A. W. Lammert; Idaho Pole Company, a co-partnership composed of W. L. Beckwith and John H. Fowler; Chewelah Mill Company; Reeves-Farrell Lumber Company; Post Falls Lumber & Manufacturing Company; Laclede Lumber Company; Bonners Ferry Lumber Company; Dehlbohm Lumber Company; Humbird Lumber Company; Dover Lumber Company; Sand Point Lumber & Pole Company; Barber Lumber Company; Overland Lumber Company; Panhandle Lumber Company, Limited; George Palmer

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Lumber Company; Grande Ronde Lumber Company; Stoddard Brothers Company; Schockley & McMurren Lumber Company; Goodnough Mercantile & Stock Company; Summerville Lumber Company; Wisconsin-Oregon Lumber Company, and Empire Lumber Company.

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY Company; Chicago, Burlington & Quincy Railroad Company; Spokane Falls & Northern Railway Company; Columbia & Red Mountain Railway Company; Kootenai Valley Railway Company; Red Mountain Railway Company; Southern Pacific Company; Union Pacific Railroad Company; Oregon Short Line Railway Company; Oregon Railroad & Navigation Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul
35 Railway Company; Canadian Pacific Railway Company; Spokane-International Railway Company; Coeur D'Alene & Spokane Railway Company, Limited; Spokane & Inland Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Idaho & Washington Northern Railroad Company; and Chicago, Milwaukee & St. Paul Railway Company of Washington, Defendants; Oregon & Washington Lumber Manufacturers' Association, Intervener.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered that said defendants, except the Chicago, Milwaukee and St. Paul Railway Company of Washington, are hereby notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present relation of rates on interstate shipments of lumber, shingles, and other forest products from points of origin in Washington, Oregon, Idaho, and Montana to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific R. Co. et al., and case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al.

It is further ordered that said defendants and each of them, except the Chicago, Milwaukee & St. Paul Railway Company of Washington, be, and they are hereby, notified and required to establish
36 and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years rates on said interstate shipments of lumber, shingles, and other forest products in accordance with the following differentials:

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane rates" group to points

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on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Texas, along the Kansas City Southern Railway, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the rates prescribed by the commission in cases No. 1327, Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. et al.; No. 1329, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al.; and No. 1335, Southwest Washington Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et al.; from the "coast rates" group, by differentials beginning at not less than 2 cents per 100 pounds, and graded up westwardly (a) to a differential of not less than 6 cents per 100 pounds at Buford, N. Dak., on the line of the Great Northern Railway; (b) to a differential of not less than 6 cents per 100 pounds at Medora, N. Dak., on the line of the Northern Pacific Railway; (c) to a differential of not less than 6 cents per 100 pounds at Edgemont, S. Dak., on the line of the Chicago, Burlington & Quincy Railroad; (d) to a differential of not less than 6 cents per 100 pounds at Cheyenne, Wyo., on the line of the Union Pacific Railroad; (e) and to a differential of not less than 6 cents per 100 pounds at Denver, Colo., on the line of the Union Pacific Railroad.

Rates from the present "Spokane rates" group and from the present "Montana–Oregon" rates group to points on and west of said north and south line, Pembina–Port Arthur, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be
37 less than the "coast rates," as prescribed in the cases specified, by differentials beginning at not less than 3 cents per 100 pounds and graded up westwardly therefrom to a differential of not less than 7 cents per 100 pounds at Buford, N. Dak., Medora, N. Dak., Edgmont, S. Dak., Cheyenne, Wyo., and Denver, Colo., as described in the preceding paragraph.

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane rates" group to points east of said line, Pembina–Port Arthur, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "coast rates," as prescribed in the cases specified, by a differential of not less than 2 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi crossing to the Mississippi River crossings.

Rates from the said "Spokane rates" group and the "Montana–Oregon" rates group as those groups now exist, to points east of said line, excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux

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City, Iowa, and Kansas City, Mo., shall be less than the "coast rates," as prescribed in the cases specified, by a differential of not less than 3 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi River crossings.

And it is further ordered that as to the Chicago, Milwaukee & St. Paul Railway Company of Washington the complaint in this proceeding be, and it is hereby, dismissed.

XI.

And your orators further show that the defendant Interstate Commerce Commission, on the 1st day of September, 1908, in said cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' As-
38 sociation et al. v. Northern Pacific Railway Company et al.," entered a further order as follows, to wit:

Upon further consideration of the record in the above entitled cause;

It is ordered that the order heretofore entered herein by the commission on the first day of June, 1908, and as amended by the order of the commission entered on the 27th day of June, 1908, changing the effective date of said order from Aug. 15, 1908, to Oct. 15, 1908, be further modified and amended so as to read as follows:

It is ordered that, as the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company, have failed and neglected to voluntarily establish a through route for the transportation of forest products between the points hereinafter named, and as no reasonable or satisfactory through route now exists between said points, that said defendants last named be, and they are hereby, required on or before the 17th day of October, 1908, to establish and maintain in operation for a period of not less than two years thereafter, through routes through Portland, Ore., over their respective lines of railroad for the through transportation of fir and spruce lumber, shingles, cedar lumber, and long timbers requiring two or more cars, including with each commodity named other forest products grouped therewith in the tariff hereinafter mentioned, from all points in Washington on the line of the Northern Pacific Railway Company as far north as Seattle and not east of Palmer, Wash., excluding points south and east of Seattle having rail connection with Seattle only by junction points north of Seattle, to Salt Lake and Ogden, Utah, and to all other points in Utah taking same rates as Salt Lake and Ogden on shipments of forest products from Portland, Ore., as shown by Transcontinental Freight Bureau Tariff I. C. C. No. 564 and supplements thereto.

39 It is further ordered that the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon,

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the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company be, and they are hereby, notified and required to establish and put in force on or before the 17th day of October, 1908, and maintain for a period of two years thereafter, joint through rates applicable to said through routes on the forest products hereinafter named, including with each other forest products grouped therewith in the tariffs last above mentioned, from all points of origin on said through routes to all destinations above named, which said joint through rates shall in no case exceed the following scale in cents per hundred pounds:

Fir and spruce lumber in carloads	$0.40
Shingles, in carloads	.50
Cedar lumber	.50
Long timbers requiring two or more cars	.50

subject, however, to present minimum weight regulations.

It is further ordered that in establishing joint rates on the forest products above named applicable to the through routes hereinbefore ordered between the respective points of origin and destinations mentioned, said defendants shall in no case make said joint through rates more than 2½ cents per 100 pounds higher than the rates on the same forest products from Portland, Ore., to said destinations.

It is further ordered that the above order does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction via the same line when the shorter is included within the longer.

It is further ordered that said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain notation that it was issued under the authority hereby granted and must refer to the title and number of this case.

40 It is further ordered that as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland, Ore., over the lines of the Northern Pacific Railway Company, the Great Northern Railway Company, and the Union Pacific system to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed.

XII.

Your orators further show that the effect of the orders so entered by the defendant in said cause 1327 if enforced will be to reduce the rates fixed by the tariffs of your orators for the transportation of lumber, shingles, and forest products from points within the State of Oregon to points in the other States above mentioned substantially five (5) cents a hundred pounds, and in some instances more than five cents a hundred pounds.

XIII.

Your orators aver and charge that in making said orders and endeavoring to establish said rates said commission acted without warrant of law; that the said act of 1887 to regulate commerce, and the several acts amendatory thereof and supplementary thereto, particularly the amendment of June 29, 1906, popularly known as the "Hepburn bill," under which said commission professed to act, are in violation of the Constitution of the United States in that they profess to confer upon said commission executive, legislative, and judicial powers. More specifically pleading in this behalf, your orators say: All through said acts administrative powers are conferred upon the commission. In section 15 the commission is authorized to act as a court, to take judicial cognizance of com-
41 plaint filed for damages, and after hearing to award damages, which award establishes prima facie right in the complainant, and which no carrier against whom the award has been made can resist except by assuming the burden of proof and overthrowing the prima facie effect of the commission's award.

The award can be resisted only under penalty of the carriers paying not only the usual costs of suit, but an attorney's fee to complainant in addition if cast in the action.

By section 15 of said act said commission is authorized and empowered, after a hearing upon complaint, whenever in its opinion any rate or charge demanded, charged, or collected by any carrier to the act is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, to determine and prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case as the maximum to be charged, and to make an order that the carrier shall cease and desist from demanding, charging, or collecting the rate or charge complained of and condemned by said commission, and shall not thereafter, for a period not exceeding two years, publish, demand, or collect any rate or charge in excess of the maximum rate or charge so prescribed by said commission as a substitute for the rate or charge condemned.

Under the provisions of said section and of section 13 of the act, in which the complaint containing a statement of the charges made is more particularly provided for, the commission is empowered to proceed, and the proceeding itself is against the particular carrier or carriers, and such carrier or carriers only as are charged with
42 unreasonableness in the matter of its or their rates; and upon hearing and trial of such carrier or carriers in said proceeding the said commission, under the aforesaid sections, is authorized to adjudge the rate or charge of said particular carrier or carriers to be unreasonable, and as a consequence thereof to adjudge against said particular carrier or carriers another different and lower rate as the maximum to be charged by such particular carrier or carriers in such case for a period not exceeding two years. Such proceeding, hearing, trial, determination, and judgment involve and require the exercise

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of judicial power by the same commission, and it is not competent to Congress to invest said commission with such power; and any investiture, distribution, or exercise of such power in, to, or by said commission is in violation of the Constitution of the United States, and particularly so much thereof as provides for the distribution and exercise of the judicial authority of the United States; and herein reference is made to section 1 of Article III of the Constitution of the United States; and the commission has and possesses no such judicial power.

Further pleading as to that provision of section 15 of the act to regulate commerce, as amended, which declares that the commission shall prescribe what shall be the reasonable rate or rates, charge or charges, to be observed as the maximum to be charged, your orators say this provision is contrary to the Constitution of the United States, and especially to section 1, Article I, above quoted, in that by that article all legislative power is confined to the Congress of the United States. The prescribing of a maximum rate which carriers may charge is a legislative function. Congress has not pre-
43 scribed a maximum rate to govern in the cases provided for, but by said act delegates this power to the commission, and in doing so places in its hands legislative power.

XIV.

Your orators aver that in and by section 1 of the said act to regulate commerce it is provided that all charges made by any common carrier subject to the act, for any service rendered or to be rendered in the transportation of property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. That your orators, as the owners and operators of the railroads herein above described, and the franchises, equipment, and appurtenances connected with such railroads, are entitled to the possession, management, and beneficial use thereof, and are authorized to establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable. In and by section 15 of the said act the Interstate Commerce Commission is authorized and empowered, after hearing upon complaint, whenever it shall be of the opinion that any of the rates or charges demanded or charged or collected by any common carrier for the transportation of property as defined in the first section of the act are unjust or unreasonable or otherwise in violation of any of the provisions of the act to determine and prescribe what will be a just and reasonable rate or rates, charge or charges to be thereafter observed in such case as the maximum to be charged, and to make an order that carriers shall cease and desist from such violation to the extent that the commis-
44 sion find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed. That in and

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by said section 15 of said act it is provided that all orders of the commission prescribing rates shall take effect within a reasonable time, and not less than 30 days after the making of the same, and shall continue in force for such period, not exceeding two years, as established and prescribed by the order of the commission, unless the same shall be suspended or modified or set aside by the commissioners or be suspended or set aside by a court of competent jurisdiction. That in and by the 16th section of the said act it is provided that any carrier or any officer or agent of any carrier who knowingly fails or neglects to obey any order of the commission prescribing rates, as provided in said section of the act, shall forfeit to the United States the sum of $5,000 for each offense, and that each distinct violation shall be deemed a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

Your orators aver that the present rates attempted to be set aside by said order, but fixed and established by your orators for the transportation of lumber, shingles, and forest products from points aforesaid mentioned in the order of the said commission, and each of the said rates, are and will be for more than three years hence, low, just, and reasonable rates for the service performed in the transportation of said commodities between said places and each of them, and that the rates prescribed by the commission in and by its order, are, and each of said rates is and will be for more than three years hence, unjust and unreasonable for the service performed in
45 the transportation of lumber, shingles, and forest products, and are and will be inadequate compensation to your orators for the service rendered.

Your orators aver that by Article V of the amendments to the Constitution of the United States your orators have the right to a judicial investigation in a court by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy of the question as to the reasonableness of the said rates so fixed and established by your orators, and of the question as to the reasonableness of the said rates so fixed and established by the said commission as aforesaid, and of each of said questions.

That the attempt of the commission in and by said order sought to be set aside herein, to set aside and annul the rates established by your orators and the establishing of the said rates prescribed by said orders and each of them by the said commission, against the will of your orators, was pro tanto the taking of the property of your orators and depriving your orators thereof without due process of law, in violation of Article V of the amendments to the Constitution of the United States; and that the making of the said order of the commission herein set out was pro tanto a taking and depriving the company of its property without due process of law, in violation of Article V of the amendments to the Constitution of the United States, and thereby void and of no effect.

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Your orators further aver that the attempt of sections 15 and 16 of the said interstate commerce act to make any order of the commission prescribing rates to be charged for the transportation
46 of property become effective of its own force prior to a hearing in a court of justice of the question of the reasonableness of the rates prescribed by said order and said sections 15 and 16 in that regard are void for the reason that in and by section 1, Article III, of the Constitution of the United States all judicial power is conferred upon a Supreme Court of the United States and such inferior courts as Congress may establish, and the judges of said Supreme Court and such inferior courts shall hold office during good behavior, and the said commission has no power to prescribe any time upon which any order of the said commission prescribing rates for the transportation of property to take effect, and that the said order of the said commission is void and of no effect.

That section 16 of said act is unconstitutional and void in that it is therein provided that your orators and each of them, and any officer or agent of your orators, knowingly failing or neglecting to obey the said order of the commission herein set forth, shall forfeit to the United States the sum of $5,000 for each day that your orators or said officers or agents fail to obey said order, notwithstanding that the question of the reasonableness of the rates established by the said order have not been judicially investigated by due process of law in any court of justice, and in that said section makes said order a finality unless suspended by the commission or by some court of competent jurisdiction, and subjects your orators to penalties and forfeitures as therein provided, and deprives your orators of their property without due process of law, contrary to Article V of the amendments to the Constitution of the United States, and the force and effect of said orders sought to be enjoined and set aside
47 herein has been to compel your orators, in order to prevent their property from being forfeited through the operation of such penalties and to save the agents of your orators from being subjected to such penalties (notwithstanding such penalties are only imposed because of said orders of said commission attempting to prescribe and establish such rates), to publish and put into effect on October 15, 1908, the unreasonably low rates so attempted to be prescribed by said commission in and by said orders, whereby your orators aver that their property has been and is now being taken from them against their will and without due process of law, and without their having had a day in court and the right to a judicial investigation by a court under due process of law for the determination of the truth of the matter in controversy before said commission.

XV.

Your orators further show that the only authority sought to be vested in the defendant Interstate Commerce Commission to fix rates for the transportation of property over the lines of your orators'

railways is conferred by said section 15 of said amended act of Congress, approved June 29, 1908, by the terms whereof it is provided that whenever the said commission shall, after a full hearing, be of the opinion that any of the rates or charges demanded, charged, or collected by any common carrier or carriers, subject to the provisions of said act for the transportation of property, are unjust or unreasonable, it shall be authorized " to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be observed in such case as the maximum to be charged "; and your
48 orators further show that the said order so entered in said cause 1327, on June 2, 1908, and the said orders amendatory thereof, are further unauthorized and void, for the reason that your orators have at no time prescribed rates for the transportation of lumber, shingles, or forest products between the points named in said orders in excess of charges which are just and reasonable. And, furthermore, upon the hearing before the defendant in said cause in which said orders were so entered no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust, or unreasonable, and the defendant Interstate Commerce Commission entered its said orders without any justification therefor and without any evidence or finding of fact that said rates so fixed by said defendant were excessive, unjust, or unreasonable.

XVI.

Your orators further show that the rates for the transportation of lumber, shingles, and forest products from points within to points without the State of Oregon as fixed by the said tariffs so in effect on October 31, 1907, were substantially the same rates that were fixed by your orators in the year 1893 and solely by reason of the fact that said rates had been long continued was the conclusion reached by the defendant Interstate Commerce Commission that the rates complained of in said cause 1327, which were and are higher than the rates theretofore in effect, were unreasonable and unjust, and solely by reason of this fact were said orders so entered by the commission, but your orators show that it was established by uncontradicted evidence upon the hearing before the commis-
49 sion that the circumstances and conditions which existed at the time said previous rates were established did not exist on November 1st or 2nd, 1907, and did not exist at the time of said hearing, and had not existed for more than three years prior thereto. That it was established at the hearing before the defendant commission by uncontradicted evidence that at the time said previous rates were established the condition of the lumber market in the United States was such that the lumber product of the State of Oregon could not move to other States in any considerable quantity at rates higher than those so established, but that the condition in this respect has been gradually changing by reason of the exhaustion of the timber supply in Michigan, Minnesota, and Wisconsin, and the

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rapid increase in the value of the yellow-pine product of the Southern States, so that it was established at said hearing by uncontradicted evidence that for a period of at least three years before November 1st, 1907, the occasion for maintaining rates so low as those established in 1893 had ceased. And your orators further aver that the said defendant commission in the determination of the issues involved in said complaint expressly found that in and prior to the year 1893 the lumber interests in the States of Washington and Oregon were in their infancy, and except for purely local consumption mills located therein disposed of their surplus at points reached by water transportation, and that the volume of business was small for a considerable time even after the railroads of your orators reached the coast; that prior to the year 1893 the rates on lumber and forest products from said States to Omaha, St. Paul, and other eastern destinations were higher than the rates established in 1893,
and that under said higher rates little, if any, of the lumber
50 in said coast States moved eastward to said eastern destinations; at that time and for several years thereafter and until the practical disappearance of competition with white-pine lumber manufactured in Wisconsin, Minnesota, and Michigan, manufacturers of lumber in Washington and Oregon were unable to meet the competition of southern yellow pine and northern white pine in the States hereinbefore referred to, but that following upon the reduction in said rates inaugurated in 1893, the lumber interests in said States of Oregon and Washington increased enormously and many mills were built in the interior, so that at and for several years prior to the hearing of said complaint shipments were and had been constantly made in large amounts eastward by the lines of your orators to eastern markets, amounting to a large percentage of the output of said mills; and your orators further aver that it was expressly found to be a fact by the defendant commission that during the period of time that elapsed after the reduction in said rates in 1893 down to the time of said hearing, in the State of Oregon the price of manufactured lumber had greatly increased with increasing profits to the manufacturer, resulting from the market thus secured to him through said reduced rates, and the general advance in price in said markets during the years aforesaid, and the generally prosperous conditions surrounding the manufacture and sale of lumber in the States hereinbefore referred to, whereby your orators aver that the commission found that each and every of the conditions surrounding the lumber industry had completely changed from the time said rates were established in 1893, and that the prosperous
condition of said industry on and for more than three years
51 prior to November 1, 1907, did not require or justify the further maintenance of rates so low as those established in 1893, under the circumstances aforesaid. It was also shown by uncontradicted evidence at said hearing that your orators established and maintained the rates in effect before November 1, 1907, for the reason that in 1893 and for some years thereafter, the great volume of

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traffic moving over your orators' lines of railway was west-bound and the State of Oregon and the neighboring territory furnished insufficient traffic to load east-bound the cars employed in moving the west-bound traffic, and that the rates on lumber, shingles, and forest products were so fixed and at an abnormally low point to furnish loads for cars which would have otherwise moved East without revenue-producing freight, but that for some time before November 1, 1907, the condition had so changed that it was necessary to haul empty cars to the State of Oregon in order to furnish facilities for the movement of lumber, shingles, and forest products. It was also shown at said hearing by uncontradicted evidence that every other important element in the cost of transporting the commodities in question had greatly increased over the cost in 1893 and subsequent years. And your orators further aver that the defendant commission expressly found in its determination of said complaint that in the year 1893, when said low rates were established, the empty-car movement on the lines of your orators was east-bound, and that at the time and for some years thereafter the great volume of traffic moving over your orators' lines of railway was west-bound; but your orators aver that said commission also found that this condition in

52 and about the transportation of lumber from the States of Oregon and Washington had likewise changed since said rates were established in that at and for several years prior to the hearing of said complaint the direction of the empty-car movement on the lines of your orators has been reversed and the same is now west-bound, and that your orators are now and for several years prior to November 1, 1907, have been compelled to haul west-bound large numbers of empty cars for the purpose of furnishing equipment in the States of Oregon and Washington for the loading of lumber east-bound into the States hereinbefore referred to, where said lumber is now sold. And your orators further aver that the commission not only expressly found that the volume of lumber shipped during the last few years over the lines of your orators east-bound had enormously increased and that the lumber interests engaged in said traffic have been extraordinarily prosperous in the past few years, but also found that the density of traffic on the lines of your orators has increased to such an extent that it is more than can be advantageously handled on single-track roads such as the lines of your orators practically are, and that because of the increase in density of traffic aforesaid your orators have been compelled to, and are now engaged in constructing double-track extensions in some cases, in order more advantageously and expeditiously to handle this increased traffic. Your orators further aver that the commission found that the expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials, over and above the expense of operation as it existed at and for a few years after the year 1893, and further found that the increased traffic of your orators has required additional working force and

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equipment, thus recognizing and establishing the contention of
53 your orators that in the matter of the transportation of lumber from the State of Oregon the conditions had greatly changed from the conditions in force at the time said rates were established in 1893.

Your orators further show that the conditions with respect to the transportation of the commodities in question so existing on November 1, 1907, and for several years before that time continued to the time of said hearing as was shown by the uncontradicted evidence there produced, and, as your orators are informed and believe, will continue for at least a period of two years from October 15, 1908.

Your orators further show that notwithstanding the fact that it was so conclusively established at said hearing before the defendant commission that such rates maintained by your orators before November 1, 1907, were established and maintained under conditions wholly different from those existing at the time the rates complained of took effect and at the time of the hearing, the defendant Interstate Commerce Commission held as a matter of law that the continuance of said previous rates raised a presumption that such higher rates were unjust and unreasonable, wherein said commission acted erroneously and through a mistake and under a misapprehension of the law and without authority.

XVII.

Your orators further show that the rates so fixed by the tariffs so becoming effective on November 1 and 2, 1907, are lower than the rates charged for any like service by any carriers in the United States and lower than rates heretofore fixed by the defendant Inter-
54 state Commerce Commission for like services. The rates so fixed by said order are unremunerative and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the State of Oregon to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said orders, and your orators upon information and belief aver that the rates so fixed by said orders are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said orders aforesaid bear no fair or just relation to the rates on other traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden not only upon your orators, but upon the shippers of other commodities.

Your orators further show that the enforcement of said orders of the defendant will deprive your orators of revenue from the transportation of lumber, shingles, and forest products to which they would be entitled under the rates fixed by said tariffs so filed, published, and

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posted to an amount of more than six hundred thousand dollars per year, and each of your orators, by the enforcement of said order, will be deprived of revenue in a sum greatly in excess of two thousand dollars per year.

XVIII.

Your orators therefore pray that a decree be entered herein setting aside and annulling the said orders of the defendant Interstate
55 Commerce Commission in said cause No. 1327 and perpetually enjoining the enforcement of said orders and perpetually enjoining the defendant, and its members, their agents, servants, and representatives from enforcing said orders and from taking any steps or instituting any proceedings for the enforcement of said orders.

And your orators further pray that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that your honors grant unto your orators a writ of subpœna, directed to said Interstate Commerce Commission, commanding it at a certain day and under a certain penalty therein to be specified, to be and appear before your honors in this honorable court, and then and there full, true, and complete answer make to all and singular the premises; but not under oath (an answer under oath being hereby expressly waived), and to stand to and abide by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

Union Pacific Railroad Company, by J. C. Stubbs, its traffic director; Oregon Short Line Railroad Company, by J. C. Stubbs, its traffic director; Oregon Railroad and Navigation Company, by J. C. Stubbs, its traffic director; Southern Pacific Company, by J. C. Stubbs,
56 its traffic director and vice president; Northern Pacific Railway Company, by J. M. Hannaford, 2nd vice president; Great Northern Railway Company, by Robt. I. Farrington, 2nd vice president; Chicago, Burlington & Quincy Railroad Company, by D. Miller, 1st vice president; Oregon and California Railroad Company, by J. C. Stubbs, its traffic director; W. W. Cotton, F. C. Dillard, of counsel for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, and Oregon and California Railroad Company; James B. Kerr, Hale Holden, of counsel for Northern Pacific Railway Company, Great Northern Railway Company, and Chicago, Burlington & Quincy Railroad Company; W. F. Herrin, P. F. Dunne, N. H. Loomis, W. W. Cotton, P. L. Williams, F. C. Dillard, solicitors for complainants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad

& Navigation Company, Southern Pacific Company, and Oregon and California Railroad Company; James B. Kerr, Hale Holden, solicitors for complainants, Northern Pacific Railway Company, Great North Railway Company, and Chicago, Burlington & Quincy Railroad Company.

57 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Union Pacific Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

WILLIAM A. RAWSON,
[SEAL.] *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Short Line Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

WILLIAM A. RAWSON,
[SEAL.] *Notary Public.*

58 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Railroad and Navigation Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

WILLIAM A. RAWSON,
[SEAL.] *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director and vice president of the Southern Pacific Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

59 STATE OF MINNESOTA,
County of Ramsey, ss:

J. M. Hannaford, being first duly sworn, on oath states that he is the 2nd vice president of the Northern Pacific Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. M. HANNAFORD.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

W. T. FRANCIS,

[SEAL.] *Notary Public, Ramsey County, Minnesota.*

My commission expires April 5, 1911.

STATE OF MINNESOTA,
County of Ramsey, ss:

R. I. Farrington, being first duly sworn, on oath states that he is the second vice president of the Great Northern Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

ROBT. I. FARRINGTON.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

EARLE W. MCELROY,

[SEAL.] *Notary Public, Ramsey County, Minnesota.*

My commission expires April 14, 1911.

60 STATE OF ILLINOIS,
County of Cook, ss:

D. Miller, being first duly sworn, on oath states that he is the 1st vice president of the Chicago, Burlington & Quincy Railroad Company in the above-entitled cause. Affiant further states that he has

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read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

D. MILLER.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] J. H. PETTIBONE, *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon and California Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

(Endorsed:) Filed October 20th, 1908. Henry D. Lang, clerk.

61 Thereafter and on December 16th, 1908, the following demurrer and answer of defendant was filed in said cause in the words and figures following, to wit:

62 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and Oregon and California Railroad Company, complainants, *v.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 883.

Demurrer and answer of Interstate Commerce Commission, above-named defendant, to the amended bill of complaint of the above-named complainants.

(1.)

DEMURRER.

This defendant, the Interstate Commerce Commission, by protestation, not confessing or acknowledging all or any of the matters

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and things in the said amended bill contained to be true in
63 such mann and form as the same are therein set forth and alleged, as to so much of the said amended bill (Par. XIII and Par. XIV, excepting the clause on p. 29, beginning "Your orators aver, etc.") as seeks to aver that the act to regulate commerce as amended June 29, 1906, is unconstitutional and void, does demur thereto, and for cause of demurrer shows that said complainants have not, as appears by said portions of their said amended bill, made out any title to any equitable relief.

Defendant specially demurs to said portion of complainants' amended bill and assigns as such grounds of demurrer:

I.

That the power to prescribe maximum rates to be charged in the future on interstate traffic has constitutionally been delegated by Congress to this defendant.

II.

That the Interstate Commerce Commission, in hearing and considering evidence and arriving at conclusions regarding the reasonableness of rates to be established, proceeds in accordance with due process of law and does not therein or thereby exercise the judicial power invested by the Constitution in the courts of the United States.

III.

That in entertaining complaints for reparation and in
64 granting orders for the payment of money thereon, which orders are prima facie evidence of damages owing to complainant before this defendant, the Interstate Commerce Commission does not exercise such a purely judicial function as is forbidden by the Constitution.

IV.

That the provision of the statute which authorizes the Interstate Commerce Commission to entertain complaints for reparation and to grant orders for the payment of money thereon is entirely separable and distinct from the remaining provisions of the act to regulate commerce as amended, and does not in any wise affect the constitutionality or validity of the remaining portions of the act.

V.

That whether or not in entertaining complaints for reparation and in granting orders for the payment of money thereon, the Interstate Commerce Commission does exercise such a purely judicial function

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as is forbidden by the Constitution can not be drawn in question in this case for that there is no allegation that this defendant has exercised such power.

VI.

That the portion of the act to regulate commerce as amended which provides for penalties for willful disobedience to the orders of the commission is not offensive to the fifth amendment to the Constitution.

65

VII.

That the portion of the act to regulate commerce which provides for penalties for willful disobedience to the orders of the commission is entirely separable from the remaining portions of the statute and does not in any wise affect the constitutionality or validity of the remaining portions of the statute.

VIII.

That whether or not the penalties prescribed in the act to regulate commerce as amended for willful disobedience to the orders of the commission would render the statute in that regard offensive to the fifth amendment to the Constitution can not be drawn in question in this case for that it affirmatively appears that the complainants while seeking relief in this court are observing and obeying the said orders of the commission and are not exposed to prosecution for penalties or forfeitures.

IX.

That in providing for penalties against common carriers violating the act to regulate commerce by disobeying the orders of the said commission the statute does not offend the fifth amendment to the Constitution for that the statute expressly authorizes a suit in the Circuit Court of the United States to enjoin, suspend, or set aside the orders of the commission either before or after such orders become effective, and said statute further confers jurisdiction

66 and lays the venue for the judicial hearing according to established methods before any penalties or forfeitures can be declared, thereby preserving due process of law.

Wherefor for divers other good causes for demurrer appearing in the said amended bill, defendant prays the judgment of this honorable court whether it shall be compelled to make any answer to such parts of the said amended bill as it has hereinbefore demurred to.

(2.)

ANSWER.

And the defendant, the Interstate Commerce Commission, not waiving the said several demurrers, but wholly relying and insisting

thereon, for answer to so much of the residue of the said amended bill as it is advised that it is material or necessary for it to make answer unto, answering says:

I.

Defendant admits the allegations of Paragraph I.

II.

Defendant admits the allegations of Paragraph II.

III

Defendant admits the allegations of Paragraph III.

IV.

Defendant admits the allegations of Paragraph IV.

67 V.

Defendant admits the allegations of Paragraph V that the rates named in said tariffs so filed, published, and posted thereupon became and were the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all the points in the State of Oregon named in said tariffs to each and all the points of destination in said other States named in said tariffs; but defendant denies that the rates named in said tariffs were on November 1, 1907, ever since have been, and now are neither unreasonable nor unjust; and defendant further denies that said rates will continue to be neither unreasonable nor unjust for a period of two years from October 15, 1908.

VI.

Defendant admits the allegations of Paragraph VI.

VII.

Defendant admits the allegations of Paragraph VII.

VIII.

Defendant admits the allegations of Paragraph VIII.

IX.

Defendant admits the allegations of Paragraph IX.

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X.

Defendant admits the allegations of Paragraph X.

68 XI.

Defendant admits the allegations of Paragraph XI.

XII.

Defendant admits the allegations of Paragraph XII, that the effect of the orders so entered by the defendant in said cause 1327, if enforced, will be to reduce the rates established by complainants for the transportation of lumber, shingles, and forest products from points within the State of Oregon to many points in other States 5 cents per 100 pounds, and in some instances more than 5 cents per 100 pounds; but defendant avers that the net result of the enforcement of said orders in said cause will be to leave in full force and effect rates to most of the points embraced in said order, which are materially higher than the rates which hitherto had been voluntarily charged by complainants for many years previous to November 1, 1907.

XIII.

(Entire paragraph in amended bill of complaint covered by special demurrer.)

XIV.

(All of Paragraph XIV in the amended bill of complaint is covered by special demurrer except the clause on page 29 beginning "Your orators aver, etc.")

Defendant denies the allegations of Paragraph XIV, that the rates in effect prior to the effective date of the orders complained of
69 for the transportation of lumber, shingles, and forest products between the points mentioned in said orders, and that each of the said rates are, and will be, for more than three years hence, low, just, and reasonable rates within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law.

Defendant avers that this court can not and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning, but if this court holds it has jurisdiction to make such inquiry defendant denies that said rates are in any respect just and reasonable.

Defendant denies that the rates prescribed by it in and by its orders are, or that any of them is or will be for more than three years hence unjust and unreasonable within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law. Defendant avers that this court can not and will not inquire into the

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matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect unjust and unreasonable.

Defendant further denies that the rates fixed by this defendant are, or that any of them is or will be, to complainants, for the service rendered, inadequate compensation within the aforesaid constitutional guaranty or otherwise.

70 Defendant avers that complainants should not be heard to maintain this suit in equity for that the said complainants have a complete and adequate remedy by proceedings before this defendant in that all the matters and things in the complainants' amended bill set forth are cognizable before this defendant; that upon application of the complainants or of any of them, and upon proper showing, this defendant has power to suspend, modify, or amend in whole or in part the orders complained of and to consider any and all of the matters in the complainants' amended bill set forth and to take such action thereon and to make such order thereon as in its judgment would be proper to make; and that in advance of such application by the complainants to this defendant, the complainants are not entitled as a matter of right to invoke the jurisdiction of this court in equity. Defendant further avers that this court, sitting as a court of equity, should not herein either hear or determine the rights of the complainants upon any state of facts which were within the knowledge of the complainants and which they failed and neglected to present before this defendant at the time of the hearings out of which the orders complained of grew, nor on account of any facts, matters, or things which may have arisen since said hearings, except such facts, matters, or things be first presented by application for rehearing or otherwise to this defendant. Neither does said amended bill of complaint set forth any reason why any of such matters and things could not be or were not presented to this

71 defendant, nor that any facts, matters, or things have arisen since the said hearings, nor that the complainants, or either of them, have in any manner been prevented from presenting to this defendant for its consideration any of the matters or things in the complainants' amended bill set forth. Complainants have failed to make any application to the defendant for a rehearing of said matter, on account of any such facts, to have said orders suspended, set aside, or modified, although complainants well knew at all times since June 2, 1908, the date of the report of the defendant, that the orders complained of would be issued as a matter of course unless upon application of the complainants here (defendants before the commission) such facts should be shown to this defendant as would entitle complainants to have said orders suspended, modified, or set aside.

Defendant further avers that this court ought not to consider the averments in complainants' amended bill of complaint that the transportation of traffic on rates prescribed by the defendant will not afford a fair compensation or will entail a loss, or that the same are

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unremunerative, or that the same are unjust and unreasonable for the service performed, because such allegations and declarations are statements of conclusions and opinions of interested parties and do not have coupled therewith any statement of any of the essential elements of facts upon which or from which the reasonableness of a rate can be determined. Defendant further says that it is vested

72 with the exclusive right and power of determining what are just and reasonable maximum rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry upon original evidence leading to an independent conclusion; that in determining what are just and reasonable maximum rates to be charged in the future this defendant must and does exercise discretion; that this court ought not and can not substitute its judgment and discretion for the judgment and discretion of this defendant; that this court will only determine whether the rates prescribed by this defendant are just and reasonable within the meaning of the constitutional guaranty which compels the establishment of rates with reasonable regard for the cost to the carrier of the service rendered and for the value of the property employed therein, and also with reasonable regard for the value of the service to the public. This defendant further says that the complainants do not aver in their amended bill that they or either of them are in possession of any information or facts upon which to base the said conclusion that the rates established by this defendant are unjust and unreasonable, other than the facts and evidence which were presented before the defendant in the hearing out of which the orders complained of grew, all of which facts and evidence were presented to this defendant and were by it duly considered. Defendant shows that the ascertainment

73 mathematically of what it costs to haul a given quantity of traffic of a certain description between two points upon a certain line of railway is impossible; that over the same line of railway, hauled by the same engine, are carried in the same train traffic in varying quantities widely different in character and value; that over the same line of railway is hauled both freight and passenger traffic in different trains of varying size; that the fixed charges of maintenance and operation can not be apportioned with mathematical exactness to the one kind of traffic or to the other; that in the same train over the same line of railway are hauled both interstate and intrastate traffic; that the cost of operation and of handling these two classes of traffic can not be mathematically determined so as to apportion to each class of traffic its proper division of cost; that while a considerable proportion of cost and expense can be located to the particular service or the particular traffic in a given instance, yet that varies materially with conditions on particular lines of road with the volume, density, and direction of movement; and that no method of apportionment between different articles of freight can be devised except that which involves the exercise of discretion and judgment, results varying according to the method used.

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Defendant therefore says that the statements and allegations of Paragraph XIV of the amended bill above referred to are mere allegations and opinions which involve consideration of all these complex and difficult problems and should not be accepted for the purpose of setting aside the orders of this defendant.

74 XV.

Defendant denies that complainants have at no time prescribed rates for the transportation of lumber, shingles, and forest products between the points named in said orders in excess of charges which were just and reasonable. Defendant denies that upon the hearing before it in said cause in which said orders were so entered no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust, or unreasonable; denies that the defendant entered its orders without any justification therefor and without any evidence or finding of fact that said rates so complained of were excessive, unjust, or unreasonable. On the contrary, defendant avers that evidence was introduced before this defendant showing, and tending to show, that the rates complained of before this defendant and condemned by it in the orders in question, were unjust and unreasonable, and this defendant, after a full hearing afforded to all the parties to the complaint before it, was of the opinion that said rates so complained of were unjust and unreasonable and entered its orders accordingly. Defendant avers that in accordance with the statute in such cases made and provided, it made a report in writing in respect to the matter under investigation, which report stated the conclusions of this defendant, together with its decision, order, and requirement in the premises. Said report or opinion is attached hereto as Exhibit A,
75 and is made part hereof as fully as if the same was set forth in full in this paragraph of the answer. Defendant says that the facts shown by said investigation material to be considered by this defendant are stated fully, fairly, and completely in said report.

Defendant further says that every opportunity was afforded to complainants herein in the hearing before this defendant to introduce any and all testimony and evidence which in any wise was pertinent to the matters involved in said hearing and that at said hearings complainants herein declined to introduce further testimony and announced to this defendant that they had no further evidence to offer, and so rested their case on the evidence before this defendant.

Defendant further says that while the matters and things embraced in what is known as docket No. 1327 were pending before this defendant there were at the same time pending similar matters and things in what is known as dockets Nos. 1329, 1331, 1335, 1348, and 1054, and that by agreement of counsel in case No. 1327, to which complainants herein were parties defendant, any and all matters and things presented to this defendant in the hearings in said other cases

might, and should, be considered by this defendant with the same force and effect as if the same had been formally presented and made part of the record in No. 1327.

XVI.

Defendant denies the allegations of Paragraph XVI.

Defendant avers that the conclusions sought to be drawn
76 from said testimony tending to show the facts stated in said paragraph were strongly and earnestly controverted by complainants in the hearing before this defendant, and much testimony in opposition to the claims of the defendants in the hearing before this defendant was introduced, and that there was some conflict in the testimony and evidence before this defendant. Defendant further avers that each and every member of the Interstate Commerce Commission fully realized the great importance of the issues involved in the complaint before this defendant; that each and every member of this defendant gave personal attention to all the testimony offered upon either side during the several days occupied in the taking of testimony, and afterwards heard all parties at great length in oral argument; and that the members of this defendant carefully examined and considered the various matters of fact and argument contained in the voluminous briefs filed by each party to the hearing before this defendant. Defendant further avers that the orders complained of in this amended bill of complaint, and the report and opinion attached hereto and made a part hereof as Exhibit A, are the result of the most painstaking consideration and care on the part of each individual member of this defendant.

This defendant avers that by the statute it has been authorized and required to perform certain duties; that in the distribution of the powers of government this defendant is required to determine,
in cases like that heard by it (out of which the orders com-
77 plained of in this case grew), what shall be the just and reasonable transportation charge to be charged by carriers subject to said act for the future; that authority to determine that issue could not be under the Constitution of the United States conferred upon this court, and, even if it could be so conferred, such power and authority has not been so conferred by any existing law.

Defendant further avers that it is both the right and the duty of this court to protect these complainants against arbitrary and unlawful exercise of authority conferred upon this defendant. Yet, this court ought not, and will not, review the judgment and findings of this defendant unless it be made clearly to appear that the orders complained of transcend the pale of legitimate regulation and constitute such a violation of the constitutional rights of the carrier as to shock the conscience of a chancellor.

Defendant further avers that the establishment of a rate of transportation for the future involves the exercise of discretion and judg-

ment; that Congress has attempted to establish in this defendant an expert tribunal for determining questions of this character; and that this court will not undertake to say whether, upon all the facts existing in this case, it would have arrived at a different conclusion upon the facts presented as to what the rates should be for the future.

XVII.

Defendant denies the allegations of Paragraph XVII, that the rates in effect on November 1 and 2, 1907, are lower than the
78 rates charged for like service by any carrier in the United States, and lower than rates heretofore fixed by this defendant for like services. Defendant denies that the rates fixed by the orders of this defendant are unremunerative and confiscatory in any sense. Defendant avers, on the contrary, that the rates established by the orders complained of are higher than the rates voluntarily established by the carriers for the same transportation covering a long period of years. Defendant avers that the complainants herein during the last ten years have received from their operations as common carriers munificent returns upon the property invested, and that said returns upon the property aforesaid are far above the average received by carriers in other parts of the United States.

Defendant avers that it is unable to determine from the amended bill of complaint what the complainants regard as constituting cost of conducting transportation. Defendant denies that the rates fixed by the orders of this defendant are not, and will not be, sufficient to pay the cost of conducting transportation and any just or fair return upon the value of the property used in said transportation, no matter whether complainants refer to the mere cost of hauling the traffic or whether complainants refer to the proportion of fixed charges properly attributable to said transportation and the cost of operating such transportation.

Defendant further avers that in considering what is a just
79 and reasonable rate for the future many things are to be considered; that one of these is the question as to what extent the traffic covered by the orders of this defendant shall contribute to the total profit of the complainants herein.

Defendant admits that the enforcement of the orders complained of involves to each of the complainants an amount in excess of $2,000 per year.

Defendant therefore avers, in conclusion, that in the making of the orders complained of this defendant considered every material fact and circumstance which it should have considered, and failed to consider no material fact or circumstance which it should have considered.

XVIII.

Defendant avers that the allegations of complainants' amended bill of complaint are vague and uncertain; that they do not set forth facts with sufficient certainty to show the conclusions which are

therein stated, to the effect that the rates prescribed by this defendant in its orders complained of will require transportation at less than the cost of service, or at a loss to the carrier, or that the same will be unremunerative, or that the same are unjust and unreasonable, or that the same is confiscatory; and that because of the failure on the part of the complainants to specify the particular items of returns from said rates and the particular expense incident to the transportation mentioned in the defendant's order the defendant is unable to know what complainants expect to show at final
80 hearing, or otherwise, and on this account is not able more specifically to answer the general allegations, averments, and conclusions of the amended bill of complaint; and the defendant says that it ought not to be required to answer such allegations.

The defendant therefore denies each and all of the allegations of complainants' amended bill of complaint not otherwise specifically denied herein, and which defendant is advised is material or necessary to be answered, and says that the conclusions, inferences, and arguments are erroneous and without foundation, and that the rates which this defendant prescribed are in all things just and reasonable and will afford to each of the carriers complainant a just compensation in all instances for the service performed.

The defendant denies that the complainants are in anywise entitled to the relief, or any part thereof, prayed for in said amended bill of complaint, or any relief whatsoever; and the defendant claims the same advantage of this, its answer thereto, as if it had demurred to said amended bill of complaint and prays to be dismissed, with its reasonable charges in this behalf most wrongfully sustained.

INTERSTATE COMMERCE COMMISSION,
By ——— ———
Secretary thereof, thereunto duly authoried.

81 I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

L. M. WALTER,
Solicitor for Defendant.

WASHINGTON,
District of Columbia:

Edward A. Moseley, being first duly sworn, says on oath that he is the secretary of the defendant; that he knows the contents of the foregoing demurrer and answer; that the said demurrer is not interposed for delay; and that the matters and things stated in the answer are true to the best of his knowledge and belief.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Solicitors for Defendant.

Subscribed and sworn to before me this the ——— day of December, 1908.

———,
Notary Public.

82 EXHIBIT A.

83 *Interstate Commerce Commission Reports.*

No. 1327.

OREGON & WASHINGTON LUMBER MANUFACTURERS' ASSOCIATION ET
v.
UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted March 21, 1908. Decided June 2, 1908.

1. On or about November 1, 1907, the roads running east from timbered sections of Oregon, Washington, British Columb Idaho, and Montana, together with their connections, rai the rates upon lumber, shingles, and other forest products nearly all destinations in the United States in which t lumber finds a market. The increase in rates was not u form to all points, but in a great proportion of instances equaled 20 or 25 per centum of the rates theretofore in eff The rates so increased had been substantially the same si 1893, when the Great Northern Railway Company establis eastbound rates upon lumber and other forest products wh would move the traffic to points where it could find a mar in competition with like products from other sources of supp and which would thus give loading for cars that were be hauled east empty. The lumber industry in the Pacific nor west grew to enormous proportions and generally was hig profitable. Large numbers of men were employed, and v amounts of capital were invested therein.
2. The increase in rates came substantially contemporaneously w the effect on the Pacific coast of the financial depression 1907. A great portion of the lumber mills were obliged shut down and practical stagnation in the lumber trade ensu The lumber manufacturers and shippers united generally complaint, in this and other proceedings, against the increa rates, alleging them to be unreasonable, unjustly discrimi tory, and unduly prejudicial to them, to the industry, and the locality.
3. Rates lower than those increased in November, 1907, had been effect via the lines of some of the defendants since 1889. T volume of business on the lines of defendants had multipli Enormous sums had been expended from income from ope tion in permanent improvement of their properties. Libe dividends had been paid for a series of years, and in addit thereto large sums had been carried to surplus accounts.
4. Lumber moves in large quantities, is loaded by shipper and loaded by consignee, is shipped in both closed and open ca is loaded to a high minimum carload weight, does not requ

especial or expedited movement, is not easily injured in transit, causes few damage claims, is, so far as transportation is
84 concerned, a low-grade commodity, and it should move at low rates, especially when the haul is long, as it is in this case. The prosperity of the shippers' business is no gauge with which to measure the reasonableness of transportation rates.
5. *Held*, that the increase in rates was so great as to result in unreasonable rates. Part of said increase condemned and a more equitable adjustment of rates prescribed. Reparation awarded.

Teal & Minor and Dysart & Ellsbury for complainants.

James B. Kerr, Hale Holden, F. C. Dillard, and W. W. Cotton for defendants.

Report of the Commission.

CLARK, Commissioner:

Complainant, Oregon & Washington Lumber Manufacturing Association, is a corporation organized for the purpose of upbuilding the lumber manufacturing interests of the Pacific coast. Its stockholders consist of many persons, firms, and corporations engaged in the manufacture and interstate shipment of lumber, shingles, and kindred forest products from the State of Oregon and adjacent points on the Columbia River in the State of Washington. A list of said stockholders is annexed to the complaint, and complainant brings this proceeding in behalf of said stockholders. The other complainants are corporations engaged in the same business in the State of Oregon. Defendant common carriers transport said forest products from the various points of origin en route to destinations in the several markets in other States where complainants dispose of their output.

The complaint alleges that an advance in the rates on lumber and other forest products established by the defendants and other participating carriers from North Pacific coast territory to the various intermediate and terminal points hereinafter mentioned is unjust, unreasonable, and unjustly discriminatory to complainants. Restoration of the old rates, and reparation for all charges in excess thereof, are prayed for. The defendants admit the advance in the rates; allege that the former rates were unreasonably low and unremunerative, and that the advanced rates are just and reasonable.

The new rates were established by T. C. F. B. Tariff, I. C. C. 850, effective November 1, 1907. This tariff applies from Pacific coast territory to Chicago and to intermediate basing points and territories, and while the benefit of the advance accrues entirely to the roads west of the Missouri River and of St. Paul, it in effect advances the rates to nearly all points in the United States in which coast lumber products are sold.

Defendants Astoria & Columbia River Railroad Company, Oregon Railroad & Navigation Company, and Great Northern Railway Company in connection with other participating carriers filed tariff,

I. C. C. a–2667, effective November 1, 1907, making the same
85 advance in rates on lumber, shingles, and other forest products from the Pacific coast to North Dakota and other localities.

The Northern Pacific Railway Company in connection with the Butte, Anaconda & Pacific Railway Company filed tariff, I. C. C. a–3432, effective November 2, 1907, advancing the rates on said forest products from points of production to Montana and points west thereof. The rates in the superseded tariffs have in each instance been in effect substantially since 1893.

The different points of production of the various complainants and members of complainant Lumber Manufacturing Association are so numerous that it is impracticable to set out the rates from each particular point. Generally speaking, the rates superseded by the advanced rates applied from points within the States of Oregon, Washington, Idaho, and Montana, and in British Columbia, to the territory covered by the following representative points: St. Paul and common points, Chicago and common points, Mississippi River common points, Missouri River common points, St. Louis and common points, western Missouri and southeastern Kansas, Denver and common points.

The following table shows, in cents per 100 pounds, the old and the new rates from the north Pacific coast to said representative destinations on the several kinds of forest products:

Commodity.	Chicago and common points.		Mississippi River common points.		St. Louis and common points.		St. Paul and common points.	
	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.
Shingles	60	70	60	70	62½	70	50	60
Cedar lumber	60	70	60	70	62½	70	50	60
Fir, hemlock, spruce, larch, etc	50	60	50	60	52½	60	40	50
Long timber requiring 2 or more cars	60	70	60	70	62½	70	50	60

Commodity.	Missouri River common points.		Denver and common points.		Salt Lake, Utah, and common points.		Western Missouri and southeastern Kansas and common points.	
	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.	Old rate.	New rate.
Shingles	60	65	55	60	45	55	62½	67½
Cedar lumber	60	65	50	60	40	55	62½	67½
Fir, hemlock, spruce, larch, etc	50	55	40	50	40	45	52½	57½
Long timber requiring 2 or more cars	60	65	50	60	40	55	62½	67½

Practically the same increase was made to points intermediate to above destinations.

When the lumber interests of Oregon were in their infancy, except for purely local consumption, the mills disposed of their surplus at points reached by water transportation, and the volume of business

was small for a considerable time, even after the railroads reached the coast. In 1889 a 40-cent rate on fir lumber was established by
86 the lines of the Union Pacific system from Portland to Denver, Pueblo, and other Colorado common points. A 45-cent rate was established in 1893 from Portland to Council Bluffs and Omaha and main-line stations on the Union Pacific in Nebraska. This rate was effective until April 15, 1901, when it was raised to 50 cents, but this included Sioux City and Kansas City and points west thereof. The 50-cent rate to Chicago and the 52½-cent rate to St. Louis were established concurrently with the 45-cent rate to Omaha. It will be observed that the 40-cent rate to St. Paul has never been met by the rates to any of the Missouri River crossings. The Montana-Oregon rate basis prevailed from points of origin in Oregon east of the Blue Mountains, which gave rates that were substantially 5 cents per 100 pounds lower than the rates from the coast points.

Under the old rates the lumber interests increased enormously, and many mills were built in the interior, where they were solely dependent upon rail transportation; and, except a limited number of mills situated at points like Portland, a great majority of the mills interested in this complaint are wholly dependent upon the railroads for an outlet to the markets.

The amount invested in the lumber business in the State of Oregon, exclusive of material, logs, standing timber, and timberland, is stated to be about $60,000,000, and approximately 40,000 persons in said State are directly engaged in the industry. The annual pay roll exceeds $20,000,000. The annual output of lumber exceeds 2,000,000,000 feet, and its value at the mill is approximately $30,000,000.

The superseded rates were made voluntarily by the carriers, the St. Paul rate having been inaugurated by the Great Northern in 1893, at a time when its empty-car movement was east bound and for the alleged purpose of getting loading east for those empties. The Northern Pacific and other lines in the territory affected by it were obliged to meet that rate in order to handle any of that business. It is shown that now the empty-car movement is west bound, and defendants contend that it is due wholly to the increased output of lumber. Other western products for eastern markets, as well as Asiatic import traffic, have also increased, and the record does not show what proportion of the predominating west-bound empty-car movement is due to increased lumber production.

It is without dispute that the lumber interests have been extraordinarily prosperous in the past few years, and that, generally speaking, the business has been profitable ever since the 40-cent rate to St. Paul was established in 1893. At that time, however, stumpage was very low, some purchases being made at 25 cents per 1,000 feet. This low price continued for some time after that date, and comparatively few of the mills took advantage thereof. As the
87 area of the white pine in Wisconsin, Minnesota, and Michigan decreased, the value of the Pacific coast stumpage increased,

and the same may be said to be true as to the yellow-pine stumpage of the Southern States. The increase in the price of Pacific coast stumpage has been gradual since 1893, although the greatest increase has occurred since 1902, and the larger part of that has taken place since 1905. The price in Oregon prior to the advance in the rates ranged from $1.50 to $2.50 per 1,000 feet, and along the Columbia River it was as high as $3. The majority of the millmen own their stumpage, but the majority of the stumpage is not owned by the millmen. Many large tracts are held by individuals and corporations that are not engaged in the manufacture of lumber. The price of logging has been gradually increasing, until it now costs between $5 and $6 per 1,000 feet to get logs to the mill. In some parts of Oregon it is even higher. The price of logs in the open market has likewise increased since 1893 from $2.50 and $3 per 1,000 feet in that year up to $6 in 1900. That price continued until 1902, with various increases and fluctuations following to 1904 and 1905, when the price reached $9. Following the Valparaiso and San Francisco disasters, the price increased during 1906 and 1907 to $13.50 per 1,000 feet. After the announcement was made that the lumber rates were to be advanced, the price of logs fell off $1 per 1,000 feet in the month of July, 1907; the next month the price dropped $1.50, with a corresponding fall in the following month, making the total decrease from August to December $4 per 1,000 feet. At the time of the hearing fir logs were sold for $9 per 1,000 feet in Portland, including 50 cents towage.

The cost of manufacturing lumber has kept pace with the increased cost attendant upon all other industrial pursuits. From 1904 to 1907 the advance has been 35 or 40 per cent in both labor and material. The increase in labor exceeds the increase in material, but the two make about the average stated.

During the year 1906 the mill men's average profit per 1,000 feet of all classes of lumber produced by them ranged from $1.60 to $2.80. The lower profit was made by the mills that bought logs in the open market or those operating where the logging was more expensive. The higher profit was made by those mills that owned their own stumpage, for which they charged themselves from $1 to $1.50 per 1,000 feet. Some of the same mills that made a profit of $2.80 per 1,000 feet in 1906 made a profit of 28 to 50 cents per 1,000 feet in 1905, and it is claimed that the increase in the price of lumber was due to the unusual prosperity of 1906, coupled with the extraordinary demand caused by the Valparaiso disaster and the San Francisco fire and earthquake. It is insisted, however, that the increase in the price of lumber did not equal the increase in the price for logs. The mills in Washington, both along the Columbia River and on Puget
88 Sound made greater profits than this by reason of the superior quality of the logs, but the figures herein given fairly represent the profits of the lumber interests in the territory covered by this complaint as stated in the record. The average weight of 1,000 feet of common lumber is about 2,800 pounds. The finished classes that have been kiln-dried weigh considerably less, or approximately

2,000 pounds per 1,000 feet. The long heavy timbers and rough green lumber weigh between 3,000 and 3,300 pounds per 1,000 feet. In 1893 the minimum carload weights were very low. From time to time these minima have been increased until now the minimum for closed cars is the marked capacity of the car or the cubical contents thereof; and for flat cars 60,000 pounds, unless the marked capacity is less, in which event the minimum is 5 per cent less than marked capacity. It is testified that the average weight of the carloads is 58,000 pounds.

The forest products of the Pacific coast compete in all of the territory covered by the rates in controversy with yellow pine, cypress, and a limited amount of white pine. Transportation rates from the white-pine and yellow-pine producing points to such competing territory are materially less than the rates from the Pacific coast, but the distances from the yellow-pine and white-pine territories are also materially less. Under the old rates the Pacific coast lumbermen were able to compete with yellow-pine and white-pine lumber in competitive territory and absorb the difference in freight rates in their profits. They now insist that the increase of 10 cents per 100 pounds destroys their entire profit and that the advance in the rates will prevent all competition in the territory affected by the advanced rates. On the long timbers, however, there is little or no competition from other producing points, but it is claimed that the increased rate will increase the cost to a point that will prevent their use and cause substitutes to be used for them, and that the same is true of shingles and spruce lumber. Under the old rates the cost of a carload of lumber at the mill practically equaled the freight thereon to Pittsburg. The greater part of the common lumber finds its market locally or in the nearby States and in Colorado, Nebraska, and North Dakota. Comparatively little of it gets into the Missouri River and Mississippi River territory. Common lumber is produced wherever lumber is manufactured, and, naturally, the supply of that grade of lumber equals the demand for it at all places where lumber from competitive fields of production reaches the same market. A certain portion of the lumber manufactured on the North Pacific coast can compete successfully with other lumber in any markets. They there produce certain dimensions and qualities that are produced to but a limited extent, if at all, elsewhere. These qualities are the choice portions of the logs and necessarily in producing them a large quantity of common lumber is also produced or a great waste of material occurs. The widest possible market for their medium and common lumber is what the North Pacific coast lumber men need most and every market that can reasonably be opened to their common lumber operates to lessen the waste and destruction in the natural supply. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates. The combined North Pacific coast interests market about 5,000,000,000 feet annually, as against approximately 19,000,000,000 feet of southern pine and white pine, which shows

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that the latter two predominate and fix the price in competitive markets. It is alleged by yellow-pine dealers that an advance of 5 to 10 cents per 100 pounds in their freight rates would drive them out of competitive territory.

It is insisted by the defendants that the advance in the rates will not affect the entire output of the North Pacific coast, because at least 50 per cent of that output does not reach the affected territory. But it is clear that Pacific coast lumber sold in that territory must be the surplus that can not be advantageously sold in the nearby markets, and if that surplus is thrown into the nearby markets a lowering of prices would inevitably flow from the elementary economic law of supply and demand.

It appears that a great many of the mills had closed down prior to and at the time of the hearing, resulting from lack of business even before the financial depression was felt on the Pacific coast. A salesman of one of the larger mills testified that on a trip where he would ordinarily take orders for 300 to 500 cars of lumber he was unable to get an order because he would not guarantee the old freight rates, and that he could have made sales had he guaranteed the old rates. It also appears that dealers as well as purchasing agents of railroads were refusing to buy on the ground that after the advanced rates became effective there would be a falling off in the prices of lumber, caused by the surplus that would exist in the producing territory which could not reach its former competitive markets under the advanced rates.

A great deal of evidence was offered, together with many statistical exhibits, showing the cost of railways, the cost of operating them, and their gross and net incomes, with estimates of the cost of the service rendered in transporting lumber. It is impracticable to set out in detail those facts and figures, but it may be safely said that all the carriers involved in this complaint show in their reports large incomes and large surplus earnings over and above the cost of operation, maintenance of way and equipment, depreciation thereof, fixed charges and various sinking funds for extension of lines and
90 retiring of bonds, and reasonable dividends upon the amounts invested. See report in Pacific Coast Lumber Mfrs. Asso. et al. and Southwest Washington Lumber Mfrs. Asso. et al. v. Nor. Pac. Ry. Co. et al., infra.

From this it appears that the schedule of rates applying to each defendant line, as a whole, furnishes sufficient revenue. The density of traffic on the defendant lines has increased to such an extent that it is more than can be advantageously handled on single-track roads. Double-track extensions are now in progress on some of them, and it was claimed by defendants at time of hearing that within seven months they would be able to handle all traffic offered.

The expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials. The increased business has required additional working force and equipment, which has helped to swell the total expenditure, but the extra

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expense of increased force and added equipment has found reward in increased business. Defendants say that in 1895 it required twenty days to move a carload of lumber from the coast to Minnesota Transfer, but that in 1906 it required forty-four days for the same service, and therefore the carriers are now giving the use of the car forty-four days, where under the old rate but twenty days were required, and that the shippers should pay for this extra time. This proposition is distinguished by its novelty. If a carrier's rate were to be increased in proportion to the time consumed in the transportation, a premium would be offered for the establishment of the slowest possible schedules. Increased volume of business and greater density of traffic have always been regarded as factors entering into reduction of rates, but if when the traffic offered exceeds the capacity of the carrier's equipment rates are to be increased the prosperity of the country and the development of industries and markets will depend solely upon the willingness of carriers to furnish equipment.

In 1906 the Great Northern, by reason of snow blockades, expended over $950,000 in addition to loss through suspension of traffic. During the same year its expenses were increased approximately $1,200,000 for fuel and other supplies, $1,000,000 for station service and additional train service, and $800,000 for advanced wages. The increase in wages for that year was one of the smallest items of the unusual expense incurred by that carrier. Weather conditions for the same year correspondingly increased the expenses of the Northern Pacific. Its increase in wages was practically the same as that of the Great Northern. The Union Pacific and Southern Pacific systems suffered from disastrous floods that washed away many miles of track and numerous bridges and seriously interrupted the movement of traffic for over four months. The increase in operating expenses of the Union Pacific was approximately 15 per cent, but as over
$2,000,000 were charged to operating expenses for the previous
91 year and credited to a reserve fund for future maintenance and
renewals and not used in 1906, but likewise charged to the expenses of 1906, the total increase is stated at 22.75 per cent. However, the Southern Pacific decreased its ratio of expenses to earnings during that period. The years 1906 and 1907 were unusual as to volume of business and increase in the cost of operation, both in the lumber and the railroad business.

The defendants offer a statement showing the cost of moving a loaded freight car 1 mile for the year ending June 30, 1907, on the different roads, as follows:

	Cents.
Northern Pacific Railroad Company	12.9
Great Northern Railroad Company	12.73
Chicago, Burlington and Quincy Railroad Company	15
Oregon Railroad and Navigation Company	19.3
Illinois Central Railroad Company	10.9

This result is arrived at by taking for each system its total mileage of loaded freight cars as the equivalent of moving one loaded freight car that total number of miles. (Hinckley Exhibit No. 3.)

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The figures pertaining to the Northern Pacific are sufficiently typical for illustration. Its total mileage of loaded freight cars was 309,504,759; operating expenses, $37,601,938; taxes, $2,398,719; total operating expenses and taxes, $40,000,657. The total operating expenses are divided by the total loaded freight car mileage, which gives the result of 12 cents 9 mills for moving a loaded freight car 1 mile. It is apparent that this statement can not be relied upon as the basis for accurately determining such cost. There is nothing to show the cost of the passenger service nor how much for maintenance and equipment is embraced in the total expense. After one year under the new system of accounting it will be possible to make an intelligent comparison of a carrier's accounts with its accounts for previous years, and after two years intelligent comparisons can be made with similar charges on the lines of other carriers.

However, if this estimate of the cost of moving a loaded freight car 1 mile is applied to the list of commodities shown on page 119 of defendants' brief, which includes canned goods, dried fruit, hops, and green hides, it will be found that the rates thereon from Pacific coast points to all points east of Omaha would not yield more than the cost of transportation, and to farther distant points the traffic would produce a loss. Lumber, under the 40-cent rate from Portland to St. Paul, would be carried at a loss. Manifestly this statement can not be accepted as determining with accuracy the cost of the lumber transportation.

Another statement offered by the defendants shows the passengers and the tons of freight moved 1 mile on the lines last above
92 mentioned. The figures pertaining to the Northern Pacific will again be used. That line moved 5,504,444,098 tons of freight 1 mile and carried 722,745,259 passengers 1 mile. (Hinckley Exhibit No. 1.)

Dividing the total number of tons of freight that moved 1 mile by the mileage of loaded freight cars shown and it gives 18 tons as the average load per car. The average load of lumber is 29 tons. There is diversity of opinion as to whether it costs more to carry a passenger 1 mile than it does a ton of freight 1 mile, but the majority of freight traffic men contend for the former. Assuming, however, that they cost the same, and treating the passengers carried 1 mile as so many tons of freight, and we have the total number of tons of freight moving 1 mile, 6,227,189,347. The average load of the cars in his Exhibit No. 1 was 18 tons, and if we divide the sum of the tons mileage and the passenger mileage by that number we will have 345,954,963 cars moving 1 mile. Dividing the total expenses by that number gives 11.56 cents as the cost of moving a car loaded with 18 tons 1 mile. The distance from Portland to St. Paul via the Northern Pacific and Great Northern is 2,014 miles, and the old rate was 40 cents, making the per ton per mile revenue 3.97 mills. The average load of lumber is 29 tons, which would make the income for 1 mile 11.51 cents, or a loss of .06 of a mill per mile. From Seattle and Tacoma under the old rate, and using same cost per car, the lumber would yield about

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$20 per car profit. These figures show the fallacy of estimates, because the relative cost of moving a passenger and a ton of freight 1 mile is largely guesswork, and the tonnage loading of the cars, 18 tons, used in arriving at number of loaded cars moved 1 mile, is away below the average. However, if the same estimated cost of moving a loaded car per mile is taken and compared with the earnings per mile of a loaded car of lumber from Portland to Omaha under the 50-cent rate, we find that a 29-ton car will yield 16.09 cents per mile. Taking as the cost 11.56 cents, we have 4.53 cents profit per car per mile. Multiplying the distance from Portland, 1,799 miles, by the profit per car per mile, we have $81.49 profit per car.

Another statement offered by defendants shows that the gross earnings of the Northern Pacific for 1907 were $68,447,454; that its passenger earnings were 28.03 per cent of its gross earnings, or $19,192,008; expenses of operation, including taxes, $40,000,657, or 59 per cent of gross earnings. If the ratio of expense of carrying the passenger traffic to its gross earnings is the same as the ratio of expenses of total operation to total gross earnings, then we may deduct 59 per cent from the gross passenger earnings as the expense of handling the passenger traffic. Then taking that from the total cost of operation and dividing that remainder by the total number of loaded cars moving 1 mile, and we get 9.31 cents as the cost of moving a loaded freight car 1 mile. (Hinckley Exhibit No. 2.)

93 As before observed, the rate on lumber per ton per mile from Portland on the Northern Pacific and Great Northern mileage is 3.97 mills. A 29-ton car would produce 11.51 cents per mile. Deduct the cost of moving the loaded car 1 mile and we have 2.20 cents per mile profit. Multiplying that by 2,014 miles, we have $44.30 profit per car. This same result is obtained if we say that the gross passenger earnings, being 28 per cent of the gross earnings, should bear 28 per cent of the total expense of operation. These calculations show how easy it is to play with figures and make them prove almost any desired result.

The defendants also offer another statement showing the tonnage of and revenue from Pacific coast lumber and shingles under the old tariff as compared with the tonnage of and revenue from all other freight. The year 1906 will be taken for illustration. The exhibit shows that 1,765,095,997 tons of Pacific coast lumber and shingles moved 1 mile, constituting 33.65 per cent of the total ton mileage of the Northern Pacific Railroad for the year; that 3,480,164,083 tons of freight moved 1 mile constituted all other freight ton mileage for that year and equaled 66.35 per cent of the total freight moving 1 mile. The lumber, which was practically one-third of the ton mileage, produced 18.55 per cent of the total freight revenue. The remaining ton mileage, practically 66⅔ per cent, produced 81.45 per cent of the total freight revenue. (Johnson Exhibit No. 6.)

An examination of another statement offered by the defendants shows that the ton mileage of the lumber and shingles referred to was eastbound and that the remaining ton mileage refers to all other

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freight east and west bound and all other lumber and shingles westbound. If the eastbound lumber tonnage had produced 14.78 per cent more of the total freight revenue, it would have produced the same percentage of revenue as all other freight. Complainants contend, however, that the statement omits at least $5,000,000 income from westbound lumber transportation. If it be said that lumber, and, as in this illustration, eastbound lumber, must furnish the same percentage of income as all other freight, then one of the factors so long contended for by defendants as a canon in rate making—the lower the grade of and less expensive the commodity the lower the rate made thereon—will have to be ignored—a conclusion, we think, that defendants would be the first to condemn. (Johnson Exhibit No. 11.)

Numerous comparisons have been furnished showing the rates from the yellow-pine producing points to the territory affected by the advanced rates. They throw little if any light upon the question at issue except to show the ton per mile rates. In every instance, however, the haul from the yellow-pine producing point is so materially less than the distance from the Pacific coast points that the
94 comparison is of little value. For hauls of the same distances the defendants receive, under the old rates per ton per mile, revenue greatly in excess of the per ton per mile revenue from the yellow-pine points. On the yellow-pine rates to Denver the per ton per mile revenue is less than the per ton per mile revenue from the Pacific coast to Denver, and is likewise less than the per ton per mile revenue under the old rates from the Pacific coast points to Omaha, and the distance in the latter case is considerably in excess of the distance from the farthest yellow-pine point to Denver.

The defendants offer in evidence a statement comparing the rates on other commodities with lumber. The commodities selected were canned goods, dried fruit, wool, hops, and green hides, and were based on rates to Denver, Omaha, Kansas City, and Chicago. Figuring the rate on the minimum carload weight of each of the commodities referred to and the income per car under the old rates to the same points, with the exception of Denver, the income from a car of lumber to the points named either equals or exceeds the income from the other commodities except dried fruit. Carrying the comparison to New York, under the old rates a carload of lumber would produce more than a carload of any of the other commodities. In fact, there is very little movement of canned goods west of Kansas City—the great bulk goes to Chicago and to the East. St. Louis, Milwaukee, and points in New York furnish the markets for hops. Wool moves to Boston, and hides largely to Manistique, Mich., while dried fruit moves to Kansas City and the East. Every commodity used for comparison, except hides, is covered by a blanket rate from Denver to New York City. The rates on lumber range from 40 cents per 100 pounds at Denver to 70 cents at New York.

Complainants insist that the exhibits show an unfair comparison and defendants in their brief likewise say that the comparison is

unfair if the minimum carload weights are used, but if the average car weights of the various commodities are used it will show that the revenue per car on the other commodities, carload, exceeds the revenue per car on lumber. The weights, however, are considerably in excess of the minimum, and while the average weights taken may fairly illustrate the freight paying weight of the various commodities, yet the tariffs establish the minimum weights.

The defendants also offer another exhibit comparing the earnings on other commodities with the earnings on lumber from the Pacific coast to Minnesota Transfer. Copper is taken for the period January 1 to September 30, 1907, from Crofton, and April 1 to September 30, 1907, from Grand Forks. Salmon is taken from all points from January 1 to September 30, 1907. Silk and matting from Asia from April to June, 1907, and to September 30, 1907, while lumber and shingles are taken for the month of August, 1907.
95 Copper is the only one of the commodities that bears any relation to lumber, and as the rate on that is based on carrier's limited risk of $100 per ton, and as the average car is about 36 tons, when risk and values are compared, it is of little worth as a guide to the rate on lumber.

The parties are not in harmony as to the cause for the advance in the rates in controversy. Complainants say that the justification for the advance, so far as the Union Pacific and Southern Pacific systems are concerned, rests upon these propositions: First, that the lumber business was prosperous and could stand the advance in rates; second, that the rates were largely experimental, and if they did not work they could be taken out. The Great Northern and the Northern Pacific justify the advance, first, upon the advance in the prices of fir lumber; second, upon the change in the empty-car movement; and third, the increased cost of operation. The defendants specially justify the advance on the following grounds: That the old rates were unreasonably low as compared with other rates made by defendants, and were probably below the cost of the service; second, that the old rates were so low as practically to discriminate against other traffic and that the new rates are less than might reasonably be charged for the carriage of lumber; third, that the new rates are less than the rates charged on lumber by other railroads in the United States, are less than the rates charged by defendants on lumber generally, and less than those charged by the defendants on any other commodity; fourth, that the 40-cent rate established in 1893 was made under special and peculiar circumstances which have so changed as to require and warrant the advance. It may be added in this connection that up to 1904 spruce lumber carried the same rate as cedar lumber, but at that time it was reduced to the fir-lumber rate.

The Supreme Court of the United States has said in Interstate Commerce Commission v. Chicago Great Western Ry. Co., 209 U. S., 108, that an increase of rates by a carrier raises no presumption of wrong. It seems, however, that when certain rates have been in force

for a long period of time and business conditions have become well settled thereon and the carrier is earning a liberal income and paying liberal dividends while expending large sums in improvements and renewals, a material increase in those rates unaccompanied by a corresponding decrease in other rates places upon the carrier the obligation of justifying the increase.

Under this presumption complainants contend that the old rates were reasonable and remunerative; that under them many mills have been built and large amounts of money have been invested which under the new rates will be lost because the mills can not find an outlet for their product in the territory affected by the advance
96 in the rates; that the consumers in the affected territory are likewise interested; that the carriers should grant rates that will permit the widest possible competition in commodities; that the carriers' total incomes from their entire schedules of rates are sufficiently remunerative and profitable, and such being the case the carriers are estopped from increasing a rate on any commodity that will increase the income; that if the total income is sufficient they are not permitted to increase the rate on a given commodity that may be lower than the cost of transportation. To this last proposition we, of course, can not assent.

While denying an intent to claim that a rate on a commodity may be based upon the profitable nature of an industry producing it, yet defendants indirectly advance that theory. They also insist that every commodity should bear its just burden of rates and that lumber did not bear its just proportion, and that therefore the rates thereon should have been increased. If this is true, some other commodity is bearing too high a rate, but defendants have not suggested which one. They also insist that the changed conditions since the low rates were inaugurated required the advance. Neither of the parties are right in all their contentions.

The railroad rates from various points of production will determine so far as transportation is concerned the limit or the extent of the consuming territory which any given commodity can reach. In competition with others and in their desire for business, carriers may move a commodity as far as a remunerative rate will permit—that is, if the compensation is something above the actual cost of the service, and it may be doubted whether carriers can go to this extent if the equipment so used is thereby diverted from the demands of other traffic offered to the carrier. Points producing the same commodity may be widely separated and be served by different carriers. It is manifest that the rates of the different carriers serving the different points will likewise determine the limits of the common competitive territory of the commodities from such points of production. Competitive rates made by the several carriers serving the different points of production may be lower than they could be compelled to make. The law permits the making of a competitive rate to the extent above

mentioned, but there is no law that requires the carriers to go to that extent. This controversy can not be determined wholly upon the ground that complainants have enjoyed the lower rate for many years and that interests have been built up thereunder, and that loss of business, investments, profits, and markets will result under the increased rates. It must be determined on the justness or reasonableness of the rates in controversy. Neither do the interests of the public require that lumber should be transported at other than just and reasonable rates.

97 Defendants can not justify the advance on the theory that the increase in the rates will be absorbed by the decrease in the cost of the raw material. From the record it appears that the price of this lumber in the common competitive territory is largely controlled by the price of yellow pine, and that only for the past few years has fir lumber been considered in competition with yellow pine. All lumber is sold f. o. b. the mills; the freight to the point of destination is added as a part of the invoice price which is paid by consignee and deducted from said invoice price. The same is true as to shipments from the yellow-pine country and the margin of difference in the two rates gives the yellow-pine producer a considerable margin of profit over the Pacific coast manufacturer. It seems quite clear that the price of lumber prior to this advance in rates had reached a point where further increase in the price would have brought about the use of substitutes therefor in all instances where substitutes could be used. On the price prevailing prior to July, 1907, it is clear that the Pacific coast lumber dealers could not have absorbed in their selling price this increase in rate, nor could they have added it thereto and competed successfully with yellow pine. It is undoubtedly true that this advance in the rate must be absorbed some place, and if the logs are to be deemed the raw material, as an economic principle the raw material would have to absorb this increased rate if disposition is to be made of such raw material. This theory assumes that the logs are cut. The advance in the rate would not reduce the price of timber land or stumpage, and up to the time of the hearing had in no way affected them. Whether the advance in the rates be absorbed in the price of the raw material or whether it comes out of the manufactured product it is apparent that some one's profits are reduced under this advance in the rates, and whether the loggers have been making an unusual profit, or the mill men owning their own logs have made an abnormal profit thereon, or the mills have made large profits on the manufactured product, the advanced rate can not be justified on these propositions. It must be justified on the ground that it is just and reasonable, regardless of the prosperous condition of the industry affected, or where it will be absorbed. So that we have these propositions: If the old rates were too low to be just and reasonable, complainants can not urge their loss as a ground for maintaining them; if the old rates were just and reasonable, the defendants can not justify the advance on the ground of the prosperity

of the lumber business, or that the loggers will absorb the increase in the decreased price of raw material.

The defendants urge with great vigor that the empty east-bound car movement prevailing at the time of the establishment of the 40-cent rate was the principal factor influencing the establishment of that rate and as the empty-car movement is now westbound, a
98 condition has arisen which was not contemplated at the time of the establishment of the 40-cent rate. An examination of the records of the various defendants shows that the empty-car movement is now west bound. Taking the statements of the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, Union Pacific Railway Company, Northern Pacific Company, and Great Northern Railway Company for the years 1905, 1906, and 1907, it appears that on the line first mentioned the loads east and west were practically the same, but that the west-bound empty-car movement was practically 15 per cent greater than the eastern empty-car movement. On the Oregon Short Line the loads west exceeded the loads east and the west bound empty-car mileage was materially less than the empty-car mileage east. On the Union Pacific for the years 1905 and 1906 the loads east were greatly in excess of the loads west, but in 1907 the west-bound tonnage was heavier than the east-bound, and the west-bound empty-car mileage exceeded the east-bound empty-car mileage in about the same proportion as the west-bound loaded mileage exceeded the east-bound loaded mileage. What became of this excess of cars west for this year does not appear. The Great Northern and the Northern Pacific for the period mentioned showed an east-bound tonnage greatly in excess of that west-bound, and their west-bound empty-car mileage exceeds the east-bound in practically the same proportion except for the year 1907, and in that instance the percentage of west-bound empty-car movement over eastern was greatly in excess of the percentage of east-bound loads over west-bound loads. This discrepancy is not explained.

The following table shows the percentages of the several defendants' total tonnage, which products of mines and of forests contributed for the year ended June 30, 1907:

Carrier.	Mines.	Forest.
	Per cent.	Per cent.
Oregon Railroad & Navigation Co	28.61	30.25
Oregon Short Line	52.11	14.43
Union Pacific Co	31.95	7.86
Northern Pacific Co	21.05	37.38
Great Northern Co	51.75	14.80

From this table it appears that the Great Northern and Oregon Short Line are the heavy ore-carrying roads, and that the Navigation Company and the Northern Pacific are the heavier lumber-carrying

roads. For the year 1907 the percentages of empty-car movement of the lines named below was to their total movements as follows:

	Per cent.
Great Northern	24.05
Northern Pacific	21.08
Union Pacific	24.88
Oregon Short Line	29.59
Oregon Railroad & Navigation Company	18.76

99 The percentage of lumber to other tonnage carried by the Oregon Railroad & Navigation Company for 1907 was more than the percentage of lumber carried by the Short Line and the Union Pacific, yet each of these roads had a greater percentage of empty-car movement, while the Northern Pacific, the heaviest lumber-carrying road of all, had a lower percentage of empty-car movement. The Short Line, the Great Northern, and the Union Pacific were the heaviest ore-carrying roads, and their percentages of west-bound empty-car movement are the highest. The defendants contend that the predominating west-bound car movement is due solely to lumber, while complainants contend that it is not, and while there can be no doubt but what the 40-cent rate was made at a time when the empty-car movement was east bound, yet it would seem from the records that the predominating west-bound car movement can not be charged wholly to the increased east-bound movement of lumber and forest products. It will be observed that in the tables offered by the defendants west-bound empty-car movement is shown on the Great Northern, the heaviest ore-carrying road, while the east-bound empty movement is shown on the Northern Pacific, the heaviest lumber-carrying road. If, as we understand to be the case, the Great Northern figures include their ore business from the Missabe Range the figures are of no value or importance in this case, because the cars used in that trade do not go into the lumber territory in question, and neither the Missabe Range ore traffic or the North Pacific coast lumber traffic has any effect upon the other or upon the equipment used therein.

A comparison of the old rates on the Union Pacific system with the new rates on the Great Northern and Northern Pacific shows that for similar distances and destinations the new rates on the Northern lines are the same or less than the old rates on the Union Pacific system. And the president of the Northern Pacific says that the new rates will permit them to handle empties west bound for lumber without loss.

The principal points of origin involved in this complaint are those within the State of Oregon and those at adjacent points on the Columbia River in the State of Washington. From Goble to Astoria the Astoria and Columbia River furnishes the rail outlet from points on both sides of the Columbia River. The Northern Pacific does not extend south of Portland, and the 40-cent rate from Portland and from points on the Astoria and Columbia River Railroad to St. Paul applied only via the lines of the Northern Pacific and the Great

Northern. The Southern Pacific and the Oregon Railroad and Navigation Company never established that rate from points on their respective lines in Oregon. The only rate shown from Portland or intermediate points via the Navigation Company in connection
100 with the Northern Pacific is via Wallula Junction, and that only to destinations in Idaho and Montana. Therefore it seems clear that the Northern Pacific is dependent upon Portland and points on the Astoria and Columbia River Railroad for its lumber tonnage from Oregon. There are fifteen lumber mills at Portland, and all have rail and water outlets, and from the statements of the shipments made by the various mills it appears that nearly all, if not all, of the Portland mills make heavy ocean shipments, both coastwise and foreign. This is also true of the 32 mills on the line of the Astoria and Columbia River Railroad, between Portland and Astoria. All of these mills dispose of much of their output in Oregon and Washington. Their common lumber and lower grade products do not reach markets east of North Dakota, so that the lumber tonnage of the Great Northern and the Northern Pacific from points in Oregon destined to St. Paul and points East must consist largely of the higher grade products. And taking into consideration the coastwise and ocean shipments, the local disposition in Washington and Oregon, and the large percentage of common lumber and lower-grade products, the traffic in lumber from this limited territory to St. Paul via the Northern Pacific and Great Northern must be small as compared with the total output from this territory, or with the lumber traffic they move from either Seattle or Tacoma. For these reasons Portland is not a fairly representative point as to volume of lumber tonnage moving to St. Paul under the 40-cent rate, but it is fairly representative as a point in Oregon that enjoyed that rate. With these facts in view, the rate per ton per mile under the 40-cent rate to St. Paul, shown herein by way of illustration, was determined upon the distance from Portland to St. Paul. The 40-cent rate also applied from Astoria to St. Paul, where the distance is 2,074 miles, and the rate per ton per mile there would, of course, be still less. The Northern Pacific haul will be materially shortened and heavy grades will be avoided by the completion of its new line on the north bank of the Columbia River, over which line the lumber hauled by it from Oregon and southern Washington will naturally move.

Seattle takes the same rate as Portland, and Minneapolis takes the same rate as St. Paul, and when the rate per ton per mile is based upon the mileage Seattle to Minneapolis, the result is not the same as that obtained when Portland mileage is taken. Minneapolis is 10 miles nearer the coast than St. Paul, and Seattle is 186 miles nearer Minneapolis than Portland. The rate per ton per mile from points of production grouped together under one rate to points of consumption likewise grouped together under that rate is not properly determined by using the mileage between these points that are nearest to each other.

The group system of rate making is well recognized in constructing rates upon such commodities as lumber and coal, and it obtains in the yellow-pine district as well. It is also a well-established
101 principle to make transcontinental rates apply alike to large areas over which such rates "blanket." It would seem unwise to attempt to give Seattle and Tacoma a better rate than Portland or other points in the North Pacific territory.

It will be noticed that the old rate on fir lumber from Portland to the Missouri River was 50 cents per 100 pounds, and the short-line mileage is 1,799 miles, or approximately 130 miles less than the short-line mileage from Seattle to St. Paul, and it is urged that the rate from Portland to Omaha should not exceed the rate from Portland to St. Paul. However, this 50-cent rate to the Missouri River, and also extending to Chicago, applied not only from Portland but from points on the Southern Pacific lines south of Portland as far as Medford, 359 miles, and while it may be that lumber produced that far south of Portland would naturally move southward, at the same time the rate was open from Medford. The record shows that at least as far as Cottage Grove, 150 miles from Portland, lumber moves via the Southern Pacific into Portland and east over the lines of the Navigation Company. It is apparent that the greater part of the traffic covered by this complaint moves via the lines of the Southern Pacific, Oregon Railroad & Navigation Company, Oregon Short Line, and Union Pacific and its connections.

We are of the opinion that upon the entire record in this case the rates on lumber, shingles, and other forest products which were in effect immediately prior to November 1, 1907, from points in Oregon, Washington, Idaho, Montana, and British Columbia to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding points to which rates are prescribed by the commission in cases Nos. 1054 and 1331, and observing the differentials prescribed by the commission in case No. 1348, were and are just and reasonable, and should be restored.

The rates from said points of origin to points east of the line above mentioned, excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., which were in effect on October 31, 1907, might reasonably be somewhat increased. Such increase should not, however, in any case exceed the rates in effect immediately prior to November 1, 1907, by more than 5 cents per 100 pounds, under the present minimum weight regulations and must be in conformity with the differentials prescribed by the commission in case No. 1348. The rates to points in Minnesota east of the line mentioned should be graded up from that line so as to reach the maximum increase

102 at Minneapolis, St. Paul, Minnesota Transfer, and Duluth. The rates from the Missouri River crossings should be graded up and the maximum increase of 5 cents be reached at the Mississippi River. Chicago rates should apply to all points between the Mississippi River crossings, East Dubuque to East St. Louis, inclusive, and Chicago. The rates to St. Louis, and points taking the same rates, should not exceed the rates to Chicago. This adjustment preserves the differential fixed by the carriers under the advanced rates between the Missouri River and Chicago, and also maintains the parity fixed by defendants between St. Louis and Chicago.

While permitting some rates to be increased this adjustment also reduces some rates below what they were immediately prior to the increase complained of. We think that complainants are entitled to reparation only upon shipments upon which charges were collected in excess of the rates between the same points which were in effect immediately prior to November 1, 1907; that in instances in which the rates herein prescribed are not lower than the rates which were in effect between the same points immediately prior to November 1, 1907, such reparation should be measured by the difference between the rates actually paid and those herein prescribed; and that in instances in which the rates herein prescribed are lower than the rates which were in effect between the same points immediately prior to November 1, 1907, such reparation should be measured by the difference between the rates actually paid and those which were in effect between the same points immediately prior to November 1, 1907.

An order will be entered in accordance with these views, and this report should be read in connection with the commission's reports and orders in cases 1329, Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Ry. Co. et al.; 1335, Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Ry. Co. et al.; 1348, Potlatch Lumber Co. et al. v. Northern Pacific Ry. Co. et al.; 1054, Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Ry. Co. et al.; and 1331, Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Co. et al., infra.

KNAPP, chairman, dissenting:

The conclusions of the majority in these cases do not seem to me to be warranted, and I am therefore constrained to dissent.

A careful examination of the record shows that the contention of complainants rests mainly, if not altogether, upon two propositions: (1) That the rates which were advanced on November 1, 1907, had been voluntarily accorded for a considerable period of years and must therefore be regarded as reasonable; (2) that the earnings of the defendant carriers upon their entire business are so great as to afford ample revenue without advancing the rates in question.

103 Undoubtedly the fact that a given rate has long been allowed is in the nature of an admission by the carrier that the resulting earnings were fairly compensatory, and when that rate is in-

creased the carrier may properly be called upon for an explanation of its action. But when that explanation has been furnished, and the reasons shown for making the advance are prima facie sufficient, any presumption against the carrier loses its force. It is clear to me that the rates in question do not belong to the class of rates originally established on a reasonable basis in the estimation of the carrier, and which therefore ought not to be advanced without convincing reason. In other words, we are not dealing in these cases with the question of a general advance in rates, which has been the subject of recent discussion, nor with the ordinary rate situation which has been voluntarily maintained for a period of years, but with an exceptional instance of rates fixed at a very low figure, lower than might have been lawfully charged, because peculiar conditions induced the carrier to make rates for the time being on a particular commodity which were below the standard of reasonableness. All the circumstances indicate to my mind that these rates when established were regarded by the carriers, and by the shippers as well, as uncommonly if not abnormally low, and that both parties apparently anticipated that at a later date they would be advanced.

I can not but believe that conditions have so changed since these rates were established as to justify the carriers in refusing to continue them in force. Without detailing the history of these rates or the remarkable development of lumber traffic which followed their allowance, it appears to be undisputed that marked changes have taken place in recent years, and those changes furnish adequate reason, in my judgment, for higher charges than were formerly applied. During this period the market value of commercial lumber has materially advanced, and the cost of railway operations has greatly increased. I think it is clearly shown that lumber values have advanced nearly 50 per cent, certainly not less than 40 per cent, and everything indicates that this advance will be permanent. While prices will more or less fluctuate, and may not at this time be quite as high as they were a year ago, nevertheless I am convinced that lumber as a commodity will generally command prices in the future averaging at least 40 per cent above the prices which prevailed during most of the period when the lower rates were in force. I do not take into account the fact that the business of the Pacific coast lumbermen has been exceedingly profitable, nor the fact that a reduction in rates will inure largely, if not mainly, as I think, to those who own the uncut timber lands, but I do regard the very substantial and probably permanent increase in the selling price of lumber as a pertinent and important consideration. That the cost of railroad operation has greatly
104 increased within the last few years is a matter of common knowledge, and it is unnecessary to more than allude to a fact with which every well-informed person is familiar. I am, therefore, of the opinion that these conceded and significant changes in conditions warranted the defendants in increasing rates which were understood to be on a very low scale when lumber was worth little more

than two-thirds its present value and when railway service was much more cheaply performed.

The other ground of complainants' contention seems to me even less tenable. It is undoubtedly true that for a period of several years, and particularly during the fiscal years 1906 and 1907, the earnings of these defendants from their entire business were large. After defraying all the expenses of operation and maintenance, the payment of fixed charges and comparatively liberal dividends, a substantial surplus remained. But it appears to me entirely clear that no considerable part, if any, of this surplus resulted from the transportation of lumber to the territory affected by the advance in rates. This statement seems to be fully confirmed by the fact that the ton-mile rates on this lumber were very much less than the average ton-mile rates upon all the traffic of the defendant lines, including this lumber traffic. I can not concede that the unreasonableness of these advanced rates on lumber may be inferred from the showing that aggregate earnings from all traffic could be reduced without apparent injustice to these carriers, when the earnings on lumber under the old rates were extremely moderate and even under the advanced rates are comparatively small. The rates in question are not shown to be excessive, in my judgment, by the fact that these roads have been prosperous for the last few years, any more than they would be shown to be reasonable if their entire earnings had been insufficient to maintain their solvency.

Taking into account all the transportation conditions, including the haul over two mountain ranges and through a long stretch of territory which furnishes little traffic, I am of the opinion that even the advanced rates are among the lowest on which any considerable volume of lumber is anywhere moved. They are the lowest rates, all things considered, which the defendants charge on that commodity, and relatively low in comparison with their rates on other traffic. The old rates may fairly be regarded as unreasonably low, even if they did not discriminate against other traffic, and I think the defendants were justified in applying a higher scale of charges. Out of deference to the judgment of my associates, with whom I hesitate to differ on a question of this kind, I would be content to fix these rates on a basis somewhat lower than the advances actually made, but I can not agree that the basis named in the majority report must be regarded as the maximum of reasonableness.

I am authorized to say that Commissioner Harlan unites in this dissent.

(Endorsed:) Filed December 16th, 1908. Henry D. Lang, clerk.

104a Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Præcipe for order setting down demurrer for hearing.

To the clerk of the above-named court:

Please enter order setting down demurrer of defendant for hearing at next rule day.

JAMES B. KERR,
HALE HOLDEN,
F. C. DILLARD,
W. W. COTTON,
Solicitors for Complainants.

(Endorsed:) Præcipe for order setting demurrer down for February rules. Order entered T. M., vol. 39, page 91. Filed January 4th, 1909. Henry D. Lang, clerk.

104b United States Circuit Court for the District of Minnesota, Third Division.

Term minutes. June term, A. D. 1908. January 4th, 1908.

Monday morning: Court opened pursuant to adjournment. Present: Hon. Milton D. Purdy, judge; Henry D. Lang, clerk.

UNION PACIFIC RAILROAD COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
Equity. No. 883.

Pursuant to a præcipe this day filed herein, signed by the solicitors for the complainants, it is by the court ordered that the demurrer of defendant be and the same hereby is set down for hearing at the next rule day, to wit, February 1st, A. D. 1909, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

104c DECEMBER 4, 1909.

UNION PACIFIC R. R. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 883.

NORTHERN PACIFIC RY. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 884.

GREAT NORTHERN RY. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 885.

Stipulation.

In addition to the stipulation entered into at St. Paul concerning the printing of the record in the cases before the Interstate Commerce Commission, the following supplementary agreement, subject to the objections heretofore made as to the admissibility of testimony, is hereby entered into between counsel for the respective parties, as follows, to wit:

1. The printed abstract of the oral testimony fairly presents the substance of all that character of testimony offered before the Interstate Commerce Commission on the hearing before it of these cases, and the printed abstract fairly presents the selected exhibits or the substance thereof presented to said commission on said hearing.

2. The other exhibits presented on the hearing aforesaid or reports and documents on file with the commission or referred to on the hearing before said commission in said cases may be considered by the master and used by either party hereto on the hearing before him without the printing thereof.

3. Either of the parties hereto may print and file with the master or the court such portions thereof as counsel may deem material, but if the same be not printed for the hearing before the master no rights to use the same as evidence or rights to print the same for the use of the court thereafter are waived.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.

LUTHER M. WALTER,
JOSEPH N. TEAL,
WILLIAM A. WIMBISH,
Solicitors for Defendant.

(Endorsed:) Stipulation as to record for submission to master, &c. Filed Jan. 5, 1910. Henry D. Lang, clerk.

105 Thereafter and on January 4th, 1909, the following replication was filed in said cause, to wit:

106 In the Circuit Court of the United States for the District of Minnesota, Third Division.

Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and California and Oregon Railroad Company, complainants. *vs.* The Interstate Commerce Commission, defendant.	In equity. No. 883.

Replication.

These repliants saving and reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant for replication thereunto saith that they do and will aver, maintain, and prove their said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained, material, or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct and humbly prays as in and by their said bill they hath already prayed.

James B. Kerr,
Hale Holden,
W. W. Cotton,
F. C. Dillard,
Solicitors for Complainants.

(Endorsed:) Replication. Filed January 4th, 1909. Henry D. Lang, clerk.

107 Thereafter and on the 11th of January, 1909, the following instructions of the court in relation to hearing upon demurrer was filed in said cause, to wit:

108 ST. LOUIS, MISSOURI, *January 9, 1909.*

Hon. HENRY D. LANG,
Clerk, U. S. Circuit Court, St. Paul, Minnesota.

DEAR SIR: Regarding the three cases, No. 883, 884, and 885, the railroad cases against the Interstate Commerce Commission pending in St. Paul in which demurrers have been interposed, you may notify the lawyers that the circuit judges will be in St. Louis until the the first of April, that during April they will be separated and that they will be in St. Paul during the session of the Court of Appeals in May. The cases may be heard at St. Paul at some convenient time after May 1st, or they may be heard at St. Louis at some convenient time prior to April 1st, if they desire to urge their hearing at so early a date. Personally I should prefer to have them heard at St. Paul, but the judges will accommodate the lawyers as to the time of hearing. Before fixing upon the time, however, we should like notice of the time desired because some of the judges are liable to be out of the city here unless we agree upon the time.

Yours, truly,

WALTER H. SANBORN,
U. S. Circuit Judge.

(Endorsed:) Instructions of court in relation to hearing upon demurrer. January 11th, 1909. Henry D. Lang, clerk. By Louis B. Trott, deputy.

Thereafter and on February 15th, 1909, the following order appointing Frederick N. Dickson special master in chancery was filed and entered in said cause, viz:

109 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILWAY COMPANY ET AL.,
complainants,
vs.
INTERSTATE COMMERCE COMMISSION.

Come now the parties, the complainants, by F. C. Dillard, Esq., and the defendant, by Luther M. Walter, Esq., and after due consideration,

It is hereby ordered that Frederick N. Dickson, Esq., of St. Paul, Minnesota, be, and he is hereby, appointed special master in chancery in this case.

The special master hereby appointed is empowered and directed to take and report to the court the evidence in this cause; to examine the same; to make the necessary computations; to find and state the

facts in this case; and to report advisory conclusions of law, and recommend a proper form of decree herein.

It is further ordered that upon the completion of his report the special master shall notify counsel for the respective parties thereof and shall exhibit said report to them or deliver to them copies thereof; that each of the parties to this suit may thereupon file exceptions to the report with the master within thirty days after its exhibition or delivery to their counsel; and the master shall thereupon consider and sustain or overrule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings thereon, the evidence, and any modifications of or additions to his report he may deem it just and proper to make in view of the exceptions.

Upon the filing of such report and exceptions this cause shall stand for hearing before the court upon said exceptions as though
110 they had been made at the time specified in rule 83 in equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainants shall take their evidence is fixed and limited to sixty days from the date hereof; that the time within which the defendant shall take their evidence in defense is fixed and limited to forty-five days thereafter; and the time within which the complainants shall take their evidence in rebuttal is fixed and limited to thirty days thereafter.

February 13, A. D. 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order appointing F. N. Dickson, special master. Entered term minutes, volume 29, page 159. Filed February 15th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

And thereafter and on the 16th day of February, 1909, the following oath of Frederick N. Dickson was filed and entered in said cause, to wit:

111 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883. Equity.

I, Frederick N. Dickson, do solemnly swear that I will support the Constitution of the United States, and faithfully, impartially, and to

the best of my ability perform my duties as special master in chancery in the above-entitled cause. So help me God.

FREDERICK N. DICKSON.

Subscribed and sworn to before me this 16th day of February, A. D. 1909.

[SEAL OF COURT.] LOUISE B. TROTT,
Deputy Clerk, U. S. Circuit Court for the District of Minnesota.

(Endorsed:) Oath of Frederick N. Dickson, special master. Entered miscellaneous records, vol. 1, page 180. Filed February 16th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on the same day the following stipulation postponing demurrer was filed in said cause, to wit:

112 In the Circuit Court for the United States for the District of Minnesota.

UNION PACIFIC R. R. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 883.

In this cause it is stipulated and agreed that the demurrers may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier day.

HALE HOLDEN,
F. C. DILLARD,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

February 3rd, 1908.

(Endorsed:) Stipulation postponing demurrer. Filed February 16th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

And thereafter on the same day the following order postponing hearing on demurrer was entered in said cause, to wit:

113 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, defendant.

In accordance with a stipulation to that effect signed by the solicitors for the respective parties and filed herein, it is by the court

ordered that the demurrer may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier date.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order postponing hearing on demurrer. Entered T. M., vol. 39, page 164. Filed February 16th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on March 15, 1909, the following order appointing Robert S. Taylor stenographer was filed and entered in said cause, to wit:

114 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION.

It is hereby ordered, That Robert S. Taylor be, and he is hereby, appointed stenographer, empowered and directed to take and report, under the direction and orders of Honorable Frederick N. Dickson, the special master herein, the evidence that may be offered in the case above entitled.

WALTER H. SANBORN,
Circuit Judge.

ST. LOUIS, MO., *March 15, 1909.*

(Endorsed:) Order appointing Robert S. Taylor stenographer. Entered T. M., vol. 39, page 202. Filed March 15th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on April 15th, 1909, the following stipulation extending complainants' time to take testimony was filed in said cause, to wit:

115 Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants,
vs.
THE INTERSTATE COMMERCE COMMISSION, defendant.
In equity. No. 884.

Stipulation.

It is hereby stipulated and agreed by counsel for the respective parties that the time for taking complainants' evidence may be ex-

tended until May 15, 1909, and that on or before that day or immediately thereafter the time may by order of court be fixed for the taking of evidence in behalf of the defendant, as well as time thereafter, if desired, for taking evidence by complainants in rebuttal.

Dated this 15th day of April, 1909.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN.
Solicitors for Complainants.

LUTHER M. WALTER,
Solicitor for defendant.

(Endorsed:) Stipulation extending complainants' time to take testimony to May 15, 1909. Filed April 15, 1909. Henry D. Lang, clerk.

And thereafter on the 23rd of April, 1909, the following order extending time to take complainants' testimony was filed and entered in said cause, to wit:

116 Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 883.

Order.

Upon reading the stipulation filed in this cause this day, duly signed by counsel for the parties hereto, it is

Ordered, That the time heretofore granted to complainants for taking testimony in this cause be extended until May 15, 1909; that defendant may on or before said date or immediately thereafter apply to the court by stipulation or otherwise, for the fixing of a date for the taking of its testimony herein, at which time an order will be entered for that purpose, and also setting a time for taking by complainants of testimony in rebuttal after the completion of defendant's testimony so to be provided for.

In other respects the order heretofore made touching the taking of testimony and the report of the master appointed herein shall remain as provided for in the original order.

Dated April 15, 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order extending time to take complainants' testimony. Entered T. M., vol. 39, page 259. Filed April 23rd, 1909. Henry D. Lang, clerk.

117 Thereafter and on March 11th, 1910, the following stipulation to tax costs was filed and entered in said cause, to wit:

118 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} In equity. No. 883.

Stipulation to tax costs.

It is agreed that the clerk shall tax in this cause the sum of $2.50 per day for eight days in favor of H. Lee, court crier, as compensation to him for attendance at the argument of this cause before special master, in the city of Chicago, February 8th to 16th, inclusive. These costs to be adjudged against the losing party in this cause in the final event of the action.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Attorneys for Complainants.
LUTHER M. WALTER,
J. N. TEAL,
W. A. WIMBISH,
Attorneys for Defendant.

Dated at Chicago, Illinois, March 8th, 1910.

(Endorsed:) Stipulation to tax costs of H. Lee, court crier. Filed Mar. 11, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on the 30th day of July, 1910, the following stipulation to modify order was filed and entered in said cause, to wit:

119 In the Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD CO. ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, defendant.
} In equity. No. 883.

Stipulation.

It is hereby stipulated and agreed that the order entered herein on February 15, 1909, shall be modified, and that either party hereto shall file its exceptions to the master's report on or before August 19, 1910, and that an order may be entered herein setting down said exceptions for hearing before the master, in the city of St. Paul, in

August 19, 1910; that said order may provide that the master shall pass upon said exceptions and file his report, said exceptions, a report of his action thereon, and all other matters contemplated by the order of February 15, 1909, in the clerk's office, on or before August 27, 1910; that said order shall provide that either party hereto shall file such additional exceptions as may be desired in the clerk's office on or before September 10, 1910, and that this cause be set down for hearing before the circuit judges at the city of St. Paul on September 15, 1910.

HALE HOLDEN,
Solicitor for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

Dated this 27th day of July, 1910.

(Endorsed:) Stipulation to modify order. Filed July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on the same day the following order was filed and entered of record in said cause, to wit:

120 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.
} In equity. No. 883.

Order.

Upon reading the stipulation dated July 27, 1910, of the parties hereto, duly filed herein, and upon due consideration thereof:

It is ordered, That the order heretofore entered on February 15, 1909, appointing Honorable Frederick N. Dickson as special master, and defining his duties touching the making of a report, hearing exceptions thereon, and filing his said report, exceptions, and rulings thereon in the office of the clerk in this court, be, and the same is hereby, modified; and it appearing that the special master did, on July 22, 1910, deliver a copy of his report to each of the parties hereto, in lieu of the provisions of said order;

It is ordered, That either party hereto shall file its exceptions, if any, to the master's report with him on or before August 19, 1910, and that on that day, at the city of St. Paul, the special master shall hear arguments upon any exceptions so filed and presented to him to his report; that on August 27, 1910, the special master shall file with the clerk of this court his report, any exceptions thereto filed with him as aforesaid, a statement of his action and rulings thereon, together with a form of decree recommended by him to be entered in this cause.

It is further, in accordance with the stipulation as aforesaid, that either party hereto shall file with the clerk in this court,
121 on or before September 10, 1910, such further exceptions as may be taken, and that this cause be, and the same is hereby, set down for hearing before the circuit judges of this circuit, in the United States court room, at the city of St. Paul, Minnesota, on September 15, 1910, upon the master's report and the exceptions thereto, including those exceptions filed with him as aforesaid, and such additional exceptions as may be filed in the clerk's office, as provided for in this order.

WILLIS VAN DEVANTER,
United States Circuit Judge.

Dated this 30th day of July, 1910.

(Endorsed:) Order. Entered T. M., vol. 42, page 118 and 119. Filed, July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on August 27th, 1910, the following Transcript of Record, in four volumes, was filed in said cause, to wit:

(These four volumes, paged consecutively from 1 to 1623, inclusive, are printed separately, with a separate index in each volume, and marked volumes 1, 2, 3, and 4.)

1777 And thereafter and on the same day the following master's report was filed in said cause, to wit:

1778 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILROAD COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.
No. 885.

Master's report.

These three suits were begun by the carriers parties complainant hereto to enjoin the enforcement of certain orders of
1779 the Interstate Commerce Commission prescribing maximum rates for the future transportation of lumber in carload lots from points on the Pacific Coast to points in various States and Territories east and southeast of the points of origin. In the case of No. 883, called the Union Pacific case, an injunction is sought against an order made by the commission in its docket No. 1327, upon a complaint brought by the Oregon and Washington Lumber Manufacturers' Association and others against the Union Pacific Railroad Company and others. The complaint alleged that an advance in the rates on lumber and other forest products established by the defendants and other participating carriers from points in Oregon, Washington, Idaho, Montana, and British Columbia to points in other States therein set forth were unreasonable. The rates prescribed by the commission were the same as those in effect immediately prior to November 1, 1907, except that the rates to all points on and east of a line drawn from Pembina, North Dakota, south to Port Arthur, Texas, subject to minor exceptions, might be increased not to exceed 5 cents per one hundred pounds.

In the case of No. 884, called the Northern Pacific case, the bill attacks an order of the commission made in its docket No. 1329 and No. 1335, upon complaints filed by the Pacific Coast Lumber Manufacturers' Association and the Southwest Washington Lumber Manufacturers' Association, respectively. Those complaints attack the reasonableness of defendant's rates substantially as complained of in the Union Pacific case, docket No. 1327.

In the case of No. 885, called the Great Northern case, the bill attacks an order prescribing rates for the future on lumber and forest products made in its docket No. 1348, upon complaint of the Potlatch Lumber Company and others. The rates attacked
1780 had been advanced on November 1, 1907, and applied from points of origin in the States of Washington, Oregon, and Idaho east of the Cascade Mountains, commonly known as interior points. The points of destination were in States south and east of the States in which were the points of origin. In this case the commission established rates to the various points of destination referred to in numbers 1327, 1329, and 1335 lower than the coast rates group by

differentials beginning at not less than 2 cents per one hundred pounds and graded up to not less than 6 cents per one hundred pounds from the group west of Spokane. From the Spokane group the differentials graded from 3 cents to 7 cents per one hundred pounds.

All these orders were effective August 15, 1908, but were later extended by order of the commission so as to become effective October 15, 1908. The rates so prescribed by the commission are now and have been continuously in effect since said latter date and they expire by limitation of the statute on October 15, 1910.

These three cases were all referred to the master to hear and report findings of facts and recommendations for a decree and were tried together.

It is conceded that all technical requirements of the statute necessary to properly bring the matter before the Interstate Commerce Commission and to confer on the commission authority to determine and prescribe rates have been complied with. The bills allege in substance that in making the various orders the commission acted without warrant of law in that the act to regulate commerce as amended by the so-called Hepburn bill of June 29, 1906, is unconstitutional and void because it confers upon the commission executive, legislative, and judicial powers; and for the further reasons that the rates prescribed by the carriers and which the commission reduced were low, just, and reasonable and that the rates prescribed
1781 by the commission in lieu thereof were and will be for more than three years from the date of the filing of the bills unjust and inadequate compensation for the service rendered; that the making of the orders complained of was pro tanto depriving the complainants of their property without due process of law in violation of the 5th and 14th amendments of the Federal Constitution; that sections 15 and 16 of the act to regulate commerce insofar as they make the orders of the commission effective of their own force prior to a hearing in a court of justice upon the question of the reasonableness of the rates prescribed in said orders, are void as being in conflict with the Federal Constitution, which provides that all judicial power is vested in the courts of the United States; that section 16 of the act to regulate commerce is void for the additional reason that it prescribes that the carrier failing to comply with an order of the commission shall forfeit to the United States the sum of $5,000.00 for each day said carrier fails to obey said order, notwithstanding that the question of the unreasonableness of the rates has not been judicially investigated in any court of law and that it deprives complainants of their property without due process of law contrary to article five of the amendments to the Constitution of the United States.

The bills further allege that upon the hearings of the case before the commission no evidence was considered or offered which in any wise showed, or tended to show, that the rates complained of were excessive, unjust, or unreasonable, and that the commission entered the orders complained of without any justification in fact therefor

and without any evidence or finding of fact that said rates fixed by the defendants before the commission were excessive, unjust, and unreasonable; that the circumstances and conditions surrounding
1782 the transportation of lumber existing on November 1, 1907, were wholly different from those existing at the time when the rates in effect prior to said date were made; that the commission held as a matter of law that the continuance of such rates raised a presumption that the higher rates were unjust and unreasonable; that in such holding the commission acted erroneously, through a mistake and misapprehension of the law and without authority; that the rates so fixed by the commission are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and bear no just or fair relation to the rates on through traffic moving over the complainants' lines, and that the rates prescribed by the commission will impose an undue and unreasonable burden, not only upon the complainants, but upon the shippers of other commodities.

The complaints further alleged "that the rates so fixed by said order are unreasonable and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the States of Washington, Oregon, Montana, and Idaho to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order, and your orators upon information and belief aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on through traffic moving over your orators lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden, not only upon your orators, but upon the shippers of other commodities."

1783 This is the only allegation of confiscation contained in the bills.

To these bills the commission filed a demurrer and answer, the demurrer applying to those allegations of the bill which set forth that certain portions of the act to regulate commerce are unconstitutional, and by stipulation the questions raised by these demurrers are reserved for the court's decision, and with those questions the master has nothing to do.

In its answer the commission denies that the rates in effect and complained of before the commission were either unreasonable or unjust and will so continue to be. The answer sets forth the position of the commission with reference to the extent of the review which the court should exercise over the action of the commission, namely that the court should not make any inquiry with reference to whether

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the rates prescribed by the commission are just and reasonable, except within the constitutional guaranty in the fifth amendment which prohibits the taking of private property without just compensation and due process of law. The answer alleges that the rates prescribed by the commission will afford just compensation for the service rendered and that the orders were made in due process of law. It is further alleged that the court should not hear and determine these cases upon any state of facts which were within the knowledge of the complainants and which they failed or neglected to present to the commission at the time of the hearings, nor upon any facts which may have arisen since said hearings, except such facts be first presented by an application for rehearing or otherwise to the commission. It is further alleged that the mere allegation that the rates of transportation prescribed by the defendant will not afford a fair compensation or will entail a loss or will be unremunerative ought
1784 not to be considered because such allegations are statements of conclusions or opinions of interested parties and do not have coupled therewith any statements of facts from which the reasonableness of a rate can be determined. It is further alleged that the commission is vested with the exclusive power of determining what are just and reasonable rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry leading to an independent conclusion except such as may be necessary to protect the constitutional rights of complainants. The answer denies that the defendant made the orders complained of without any evidence that the rates complained of were in violation of the act to regulate commerce; and avers on the contrary that the orders were made after a full inquiry and due investigation which disclosed facts compelling the orders made by the commission.

There seems to be a sharp controversy between complainants and defendants as to the scope of the inquiry to be entertained by a Federal court in reviewing an order of the Interstate Commerce Commission which fixes and prescribes rates for the future. The complainants claim as follows: "The questions involved in all three suits are, however, practically identical, being simply the question whether the rates as advanced were unreasonable and whether the rates the commission put into effect in place of them are reasonable." It is apparent from the arguments in the briefs that the words "reasonable" and "unreasonable" are used by the complainants in the ordinary sense. The complainants argue that inasmuch as the interstate commerce act enjoins upon the commission the duty of prescribing a reasonable rate that any rate which they may prescribe which is not reasonable is unlawful and therefore without the scope of their authority and that a Federal court may fully review the action
1785 of the commission with reference to the reasonableness of a rate prescribed by them as an operating proposition above and beyond the mere question as to whether or not it violates the constitutional guaranties of just compensation.

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The defendants insist that the court has no right to investigate the rate prescribed for the future by the Interstate Commerce Commission any further than to ascertain whether or not it violates the constitutional guaranties of just compensation and due process of law. The defendants claim that the only questions properly before the court are the following: (1) If this court finds that the order was regularly made, is not fraudulent or so arbitrary as to exceed the limits of regulation, should it make any other inquiry than as to whether the rates prescribed are confiscatory? (2) Under the circumstances disclosed in this case, should this court consider the reproductive cost of complainants' property as a material fact in throwing light upon the subject matter of the inquiry? (3) Should evidence be considered by this court which has not been first presented to the Interstate Commerce Commission, there being no allegation that such additional evidence is newly discovered or could not have been presented to the commission? (4) Should any of defendant's objections to the admissibility of testimony be sustained? (5) Do the facts shown of record warrant a finding that the rates prescribed by the commission are confiscatory? (6) Are the orders of the commission in any respect unlawful?

These suits involve rates for the transportation of lumber and forest products from points on the Pacific Coast to points on and east of the Missouri and Mississippi Rivers. The facts and circumstances leading up to this litigation and out which it grows are as follows: To the west of the Cascade Mountains from the crest of
1786 the range to the Pacific Coast is a large heavily timbered district, known and dealt with in the record as the coast district, and the coast basis of rates applies to that territory. On the east side of the Cascade Mountains as far east as the city of Spokane, Washington, is another territory which is not referred to or much dwelt on in the testimony and the rates from which do not seem to be involved in these cases. Spokane is the center of another lumber-producing territory. In early years before this industry at Spokane became sufficiently developed to invade the eastern markets the old coast rates applied to Spokane and all territory west thereof, but later on when the Spokane lumber industry outgrew their merely local markets, a differential rate slightly lower than the old blanket coast rate was installed for eastern shipments, so that Spokane forms the basis of a lower differential rate on eastern shipments. Coming farther east and continuing up the slope of the Rocky Mountains we reach another district which is the basis of a still lower differential rate on eastern shipments known as the Montana-Oregon basis and typified on the Great Northern Road by Kalispell, Columbia Falls, and White Fish, on the Northern Pacific by Hamilton, St. Regis, and Missoula, Montana, and on the Union Pacific and Oregon Short Line Railroads by Boise, Idaho, and Baker City, Oregon.

As all the differential rates are of course controlled and regulated by the basic rate or the through rate east from the coast district, the discussion in these cases has been confined to the through rates.

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Prior to November 1, 1907, the following were the rates in effect from coast points to the larger destinations in the Middle West: Coast to St. Paul, 40 cents one hundred pounds; coast to Omaha, 50 cents; coast to Chicago, 50 cents; coast to Denver, 40 cents; coast to St. Louis, 52½ cents.

1787 These rates had been in effect for about 15 years and were first installed at the time the Great Northern Road completed its road to the coast. A higher rate had been in effect prior to that time but the installation of a 40-cent rate from the coast to St. Paul by the Great Northern Road compelled a reduction in rates by the other lumber-carrying roads and the foregoing rates had been in effect since the latter part of 1893, or the very early part of 1894. On the first day of November, 1907, the roads duly installed a new tariff of rates which advanced the rates on corresponding prices as follows: Coast to St. Paul, 50 cents; coast to Omaha, 55 cents; coast to Chicago, 60 cents; coast to Denver, 50 cents; coast to St. Louis, 60 cents.

Prior to November 1, 1907, the rates from the Spokane district were as follows: Spokane to St. Paul, 40 cents; Spokane to Omaha, 45 cents; Spokane to Chicago, 50 cents; Spokane to Denver, 40 cents; Spokane to St. Louis, 52½ cents. By the tariff installed November 1, 1907, these Spokane rates were advanced as follows: Spokane to St. Paul, 45 cents; Spokane to Omaha, 50 cents; Spokane to Chicago, 55 cents; Spokane to Denver, 45 cents; Spokane to St. Louis, 55 cents. Prior to November 1, 1907, rates in the third or Montana-Oregon district were as follows: To St. Paul, 40 cents; to Omaha, 40 cents; to Chicago, 50 cents; to Denver, 35 cents; to St. Louis, 49½ cents; and by the tariff installed November 1, 1907, these rates were raised as follows: To St. Paul, 43 cents; to Omaha, 43 cents; to Chicago, 53 cents; to Denver, 40 cents; to St. Louis, 52½ cents.

The conclusion of the commission was to practically restore the old rates with the exception that they permitted an advance of 5 cents per one hundred pounds on the freight destined to points east

1788 of the Mississippi River. The commission drew a line which they called the Pembina–Port Arthur line. Pembina is a station on the international boundary on the Red River of the North near the western boundary of Minnesota. They drew a line through Pembina running approximately due south following the State lines approximately until they arrived at Sioux City, Iowa, then following the Missouri River down through Omaha and Kansas City, then the line of the Kansas City Southern Road to Port Arthur, Texas, and this line is known as the Pembina–Port Arthur line. West of that line they restored the rates as they had been previous to November 1, 1907, denying the application for an advance. East of that line they permitted an advance of 5 cents per one hundred pounds.

There is no testimony in this record directly applicable to the effect upon the earnings of the complainants of this new rate established by the commission on through traffic. While it was not as much as the complainants considered reasonable, still on through traffic it was a

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distinct advance to the northern lines, but no testimony has been offered showing how this rate actually affected the earnings of the complainants.

The testimony of the complainants has been mainly directed to showing that the old rates in force for 15 years prior to November 1, 1907, were unreasonably low and did not produce their fair share of returns or remuneration to the roads. Their testimony has been largely confined to a statement of the conditions prevailing in 1893, when the old rate was first installed, and to a statement of the changed conditions prevailing in 1907, on account of which they claimed the advance in rates was justified.

The complainants admit that it is not possible for them to show the actual cost of the transportation of a carload of lumber, the
1789 actual value of that portion of their property which is devoted to the lumber traffic, what relation the net returns on lumber traffic bear to the entire body of the net returns.

They have offered testimony substantially showing that in 1893, at the time of the installation of the old rates, the lumber industry upon the co'st was in its infancy and unable to compete in the Middle West with the white pine of northern Michigan, Wisconsin, and Minnesota. It is demonstrated that in 1893 the white pine of northern Michigan, Wisconsin, and Minnesota controlled the entire northern Middle West market as far south as St. Louis. This was on account of the cheap rates of water transportation afforded by the Great Lakes and the Mississippi River. In 1893 the railroads had a large east-bound empty-car movement. There were no products on the coast sufficient to load for the eastern markets the cars required to carry to the coast all west-bound traffic.

For the purpose of providing loads for the east-bound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul.

In 1893 the prices of labor and materials and all things which went into the equipment of railroads in the handling of traffic, as well as the price of lumber, were very low.

In the period intervening between that time and November 1, 1907, the situation has been reversed. The white pine of northern Michigan, Wisconsin, and Minnesota has practically disappeared from the market and is no longer an important element of competition. The Oregon and Washington lumber has practically acquired the old white-pine market. The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry. Prices of labor and materials have also increased to a very large extent and the empty-car movement, which in 1893
1790 was from the west east, is now from the east west, or a west-bound empty-car movement now prevails. To what extent this is due to the large output of coast lumber has not been clearly shown. It appears to be partly due to other species of traffic, but to a large extent it is no doubt brought about by the very great increase in the shipments of lumber East.

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On the other hand, it as clearly appears that the price of stumpage, prices of labor, price of machinery, and all other elements entering into the lumber traffic have increased in proportion, as have the prices of those things which enter into the transportation increased.

It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements, and in addition thereto have accumulated large surplus funds.

Two of the complainants in this action, the Great Northern Road and the Northern Pacific Road, have offered before the master a large volume of testimony, consisting of an estimate made by their engineers and heads of departments as to what it would cost to reproduce their railroads. This estimate contemplates, in the case of the Northern Pacific, a period of 12 years for the reproduction of the road, and in the case of the Great Northern a period of 8 years. In making the estimate it is not contemplated that any net returns for traffic or business done during the period of construction shall be had. In the case of the Northern Pacific the estimate approximates $700,000,000.00, and in the case of the Great Northern, $550,000,000.00.

1791 It must be borne in mind that this cost of reproduction is not an ultimate fact to be considered in the solution of these cases, but merely a collateral fact offered to influence the court's conclusion upon the ultimate fact as to the real value of the properties.

The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial, and it would serve no useful purpose to attempt to make a finding as to what it would cost, under the circumstances and conditions indicated in the estimate, to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and, inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them, we think this evidence so remote and speculative as to be absolutely immaterial in this case.

FINDING OF FACTS.

Upon careful consideration of all the evidence in this case, I find the following ultimate facts, which, in my judgment, is a fair analysis of the evidence and illustrates the situation in reference to the rates in question.

I.

In 1889 a 40-cent rate per one hundred pounds was installed by the Union Pacific system from Portland, Oregon, to Denver, Pueblo, and other Colorado common points. In 1893 a 45-cent rate was installed

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by this system from Portland to Council Bluffs and Omaha and other Nebraska main-line points. Concurrently with this rate a rate of 50 cents was made to Chicago and 52½ cents was made to St. Louis.

In 1901 the 45-cent rate to Omaha and Council Bluffs was
1792 raised to 50 cents and extended or blanketed to include Sioux City, Kansas City, and other points west thereof. The 50-cent rate to Chicago was also maintained.

II.

In 1893 the Great Northern Road was completed to the coast, and in the latter part of that year or the early part of 1894 installed the superseded rates here in controversy, which were met by the Northern Pacific System and were as follows: To St. Paul, 40 cents per one hundred pounds; to Chicago, 50 cents; to the Mississippi River, 50 cents; to St. Louis, 52½ cents; to Denver, 40 cents; to Missouri River points, 50 cents.

The Union Pacific System never met the 40-cent rate to St. Paul by any of its Missouri River crossing rates. Its 50-cent rate to Omaha continued concurrently with the 40-cent rate to St. Paul from 1901 to November 1, 1907. But because of the 50-cent rate to Chicago from St. Paul, via the northern lines, it was obliged to blanket or extend its Omaha rate of 50 cents to Chicago.

III.

At and prior to 1893 the lumber-manufacturing industry in Washington and Oregon was in its early infancy. Except for purely local consumption the mills disposed of their products at points reached by water transportation. The volume of business continued to be inconsiderable for several years after the Great Northern Road reached the coast.

IV.

The superseded rates were made voluntarily by the carriers in 1893 avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads
1793 and more particularly and immediately for utilizing an east-bound empty-car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well-defined east-bound empty-car movement from the coast.

V.

In 1893, at the time the superseded rates were installed, the entire country was suffering from the effects of the financial panic of 1893; "hard times" prevailed and industries of all kinds were at a low ebb.

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VI.

In 1893 the lumber market of the northern Middle West from as far south as St. Louis was controlled and dominated by the white pine of Michigan, Wisconsin, and Minnesota, and continued to be so controlled for some years thereafter. The cheap water transportation afforded by the Great Lakes and the Mississippi River enabled the white pine to control this market until the supply became inadequate to the demand, and, in fact, exhausted. Thereafter this market became to a certain extent a battle ground between the Washington and Oregon lumber and the western pine from the Spokane district on the one hand and the southern pine on the other; but the unexampled revival of industry and increase in general business prosperity enjoyed by this middle district since 1897 has created such an enormous demand for lumber and forest products that this competition between western and coast lumber and southern lumber seems to have had but little effect in keeping down the price of lumber.

VII.

The superseded rates of 1893 were voluntarily continued in force by the carriers until November 1, 1907, and during that period, especially during the last few *few* years thereof, under this rate 1794
the lumber industry of this coast territory increased enormously. Many mills were built in the interior where they were solely dependent upon rail transportation. Except a limited number of mills situated at points like Portland, Oregon, the great majority of the mills engaged in this industry are wholly dependent on the railroads for an outlet to markets. As the industry has grown it has prospered and been profitable ever since the 40-cent rate went into effect. At the time of the hearing of these cases before the commission the amount invested in the lumber business in Oregon was approximately $60,000,000.00, exclusive of mills, logs, standing timber, and timberland. Approximately 40,000 persons were directly engaged in the industry. The annual pay rolls exceeded $20,000,000.00, and the annual output of lumber exceeded 2,000,000,000 feet. There is no sufficient data in the record from which to accurately state the number of lumber-producing plants in all this coast territory, the amount of the investment therein, or the number of men employed therein, but it clearly appears that there are many hundred mills in which are invested many millions of dollars and in which many thousands of men are employed; that the annual output has been constantly and rapidly increasing in recent years; and that the industry is the most important one of that region.

Part of the product of the mills of this coast territory are practically subject to no competition because of the superior nature of the lumber. On long timber there is little or no competition from other producing points. A certain portion of the lumber manufactured on the north Pacific coast can compete successfully with other lumber

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in any market. They there produce certain dimensions and qualities that are produced to but a limited extent for delivery elsewhere.

These qualities are the choice portions of the logs. Necessarily
1795 in producing them a large quantity of common lumber is also produced. The greater part of this common lumber finds its market locally or in the near-by States and in Colorado, Nebraska, and North and South Dakota. Comparatively little of this common lumber reaches the Missouri and Mississippi River territory. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates.

The combined north Pacific Coast States market about 5 billion feet annually as against approximately 19 billion feet of southern and white pine, showing that the southern and white pine predominate and fix the price in competitive markets.

During the summer of 1907 it became known and understood among the lumber trade that the then existing rates were to be increased. The industry immediately began to feel in some degree the effects of this unsettled rate situation. Purchasers at destination points began to postpone the placing of orders and to cancel orders already placed. The reasons given were that on account of the increase in rates lumber would be cheaper in the near future. One salesman testified that on a trip where he would ordinarily take orders for from 300 to 500 cars of lumber he was unable to get a single order because he would not guarantee the old rates. Dealers and purchasing agents of railroads refused to buy on the ground that after the advanced rates became effective there would be a falling off in the price of lumber caused by the surplus that would exist in producing territory which could not reach its former competitive markets under the advanced rates.

At and for some months prior to the hearing of these cases before the commission the lumber industry in this coast territory was greatly depressed and a large percentage of the mills had been shut down and were not in operation.

1796 At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business.

At the time the superseded rates were installed stumpage in the coast district was very low, some purchases being made at 25 cents per thousand feet. This low price continued for some time after that date and comparatively few mills took advantage thereof. As the area of the white pine in Wisconsin, Michigan, and Minnesota decreased the value of Pacific Coast stumpage increased, as did also the value of the yellow pine stumpage of the Southern States. The increase in the price of Pacific Coast stumpage has been gradual and steady since 1893. The greatest increase has occurred since 1902 and the largest part of that increase has taken place since 1905. Prior to the advance in rates in November, 1907, prices in Oregon ranged from $1.50 to $2.50 per thousand feet and along the Columbia River

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it was as high as $3.00. The majority of the millmen own their stumpage, but the majority of the stumpage is not owned by the millmen. Many large tracts are held by individuals and corporations that are not engaged in the manufacture of lumber. The price of logging has gradually increased until at the time of the hearing of these cases before the commission it cost between $5.00 and $6.00 per thousand feet to get logs to the mill. In some parts of Oregon it was even higher. The price of logs in the open market has likewise increased since 1893 from $2.50 to $3.00 per thousand feet, in the year 1893, up to $6.00 in 1900. This price continued until 1902, then with various increases and fluctuations to 1904 and 1905. In 1905 the price reached $9.00 per thousand feet. Following the Valparaiso and San Francisco disasters the price increased during 1906
1797 and 1907 to $13.50 per thousand feet. After the announcement was made that the lumber rates were to be advanced the price of logs fell off $1.00 per thousand feet in the month of July, 1907; in August, 1907, the price fell off $1.50 per thousand feet with a corresponding fall in the month of September. And the total decrease from August to December was $4.00 per thousand feet. At the time of the hearing of these cases before the commission fir logs were sold for $9.00 per thousand feet in Portland, which price included a 50-cent towage charge.

The cost of manufacturing lumber has kept pace with the increased cost attendant upon all other industrial pursuits. From 1904 to 1907 the advance has been between 35 and 40 per cent in both labor and material. The increase in labor exceeds the increase in material, but the two make an average of about 40 per cent.

During the year 1906 the millman's average profit per thousand feet upon all classes of lumber produced by them ranged from $1.60 to $2.80. A lower profit was made by mills that bought logs in the open market or those operating where logging was more expensive. The higher profit was made by mills that owned their own stumpage, for which they charged themselves from $1.00 to $1.50 per thousand feet. Some of the mills that made a profit of $2.80 per thousand feet in 1906 made a profit of 26 to 50 cents per thousand feet in 1905. The unusual general prosperity of the year 1906 coupled with the extraordinary demand for lumber caused by the Valparaiso and San Francisco disasters undoubtedly account to a considerable extent for the sharp increase in profits in the year 1906.

In the year 1890 there was a decided predominance in the empty-car movement east-bound, amounting at that time to about 161.17 per cent over the west-bound empty-car movement on the North-
1798 ern Pacific Railway. In 1891 the predominance of east-bound empty-car movement over west-bound had decreased to 72.17 per cent and in 1892 it had further decreased to 4.35 per cent. In 1893 and all subsequent years down to 1907, conditions have been reversed and during this entire period there has been a large predominance of west-bound empty-car movement over the east-bound on the Northern Pacific Road. Approximately the same condition prevailed

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during the year referred to upon the Great Northern Road. In 1893, when the Great Northern was completed to the coast, the west-bound loaded-freight-car mileage on the main line between Havre, Montana, and Seattle, Washington, was 3,688,568 as against 2,366,546 east-bound. At the same time the west-bound empty-car mileage was 607,088 as against 1,922,262 east-bound. In 1897 the west-bound loaded mileage was 7,104,181 as against 10,050,979 east-bound, whereas the empty west-bound mileage was 3,527,377 as against only 576,071 east-bound empty mileage. In 1906 the west-bound loaded mileage was 22,939,649 as against 32,323,906 east-bound loaded mileage, whereas the west-bound empty mileage had increased to 11,860,201 as against 1,806,850 east-bound empty mileage.

Ever since 1903 the condition in respect to the predominance of empty-car mileage has been changing, until in 1907 the west-bound empty-car movement greatly predominated over the east-bound empty-car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East. The establishment of manufacturers of finished products in the West has to a certain extent diminished the volume of manufactured products moving from the East to the West. In 1890 upon the Northern Pacific the predomination of west-
1799 bound loaded-car mileage over east-bound loaded-car mileage amounted to 57.23 per cent, while in 1906 the predomination of east-bound loaded-car mileage over west-bound loaded-car mileage amount to 43.40 per cent and in 1907 to 3.2 per cent. This sharp and sudden decrease in the percentage of east-bound loaded-car mileage over west-bound loaded-car mileage in the year ended June 1, 1907, was, however, not normal, but due to temporary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months.

The empty-car movement westward predominates to a greater extent on the Great Northern and other lines, on which the products of mines constitute a greater proportion of the traffic handled than forest products, than on the Northern Pacific line, which hauls a much larger percentage of forest products than do the other carriers. For the year ending June 30, 1907, the percentage of tonnage constituting all products of mines out of the total number of tons carried on the Great Northern Railway was 51.75 per cent and all forest products 14.50 per cent. On the Northern Pacific the percentage of mine products out the total tonnage was 21.05 per cent and of the forest products 37.38 per cent. A similar situation is shown to have existed on the Union Pacific system during the same period.

During all the period involved in this discussion, viz, from 1893 to November 1, 1907, the cost of operation of the complainants' roads

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has constantly increased. This increase is fairly illustrated by
1800 the testimony of the witness R. I. Farrington relating to the cost of operation of the Great Northern Road. He testifies: "Taking the year 1895 as one hundred per cent, the cost per freight-train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight-train mile was 207.7 of 1895. Of course in 1907 it is more than twice what it was in 1895 per freight-train mile. Per freight-car mile, using 1895 as one hundred per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895."

Concurrently with this increase there has been a persistent and well-directed effort on the part of all the carriers to wisely economize in the matter of cost of operation, and such results have been achieved as to preclude the idea that the increase in the cost of operation is due to any failure in wise and economic operation. The testimony clearly indicates that all these roads are wisely and economically handled, at least so far as cost of operation is concerned.

Since 1897 the lumber industry of this coast and Spokane territory has developed and increased so rapidly that it has constantly outrun the capacity of the roads to handle it, and these roads have been compelled ever since 1897 to spend vast sums in improvements, extensions, and for more powerful equipment in order to keep pace with the ever-increasing east-bound traffic from those points. Other species of east-bound traffic have also increased, but the greatest increase is shown to be in the lumber traffic.

During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly
1801 satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surplusses, and clearly appear to have been on the whole prosperous and to have earned fairly satisfactory net incomes from their transportation.

By the orders here under discussion the commission restored the rates in force immediately prior to November 1, 1907, as far east as the so-called Pembina–Port Arthur line and to the territory east thereof, permitted an advance of 5 cents per one hundred pounds, which operated to fix a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and Duluth. By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was established. The short-line distance over this system from Portland to Omaha is 1,799 miles, and to Kansas City and other Missouri River points is 2,030 miles. From the evidence and exhibits offered it fairly appears that this 50-cent rate over this system will result in a revenue of 5.56 mills per ton mile to Omaha and 4.92 mills per ton mile to Kansas City, and that such revenue

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is far below the average revenue per ton mile on any of the complainant roads, and that this 50-cent rate over this system to Omaha is a very low rate. The distance from Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, 2,052 miles, and from Astoria to St. Paul 2,072 miles. Omaha and St. Paul are on a parity as bases of through rates and are so considered by the commission and by rate experts. (See commission's decision in Spokane v. Northern Pacific Ry. Co., decided June 7, 1910, 19 I. C. C. 162.) By the orders here under discussion the commission prescribed a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and Duluth. This rate will undoubtedly result in
1802 a revenue to the northern lines measurably less than the revenue yielded to the Union Pacific line by the 50-cent rate to Omaha. Under the old 40-cent rate to St. Paul the revenue per ton miles accruing to the northern lines was 3.90 mills, and under the 50-cent rate installed November 1, 1907, would have been 4.87 mills from Portland to St. Paul. From Tacoma to Minneapolis under the 40-cent rate it was 3.98 mills per ton mile, and under the November 1, 1907, 50-cent rate it would have been 5.27 mills.

Evidence was offered by the Great Northern Railway Company and the Northern Pacific Railway Company for the purpose of proving the value of the systems of railroads owned and operated by each of said companies, respectively. This evidence consisted primarily of schedules of all items of physical property based upon the present cost of reproduction. These schedules were prepared in great detail, and the evidence indicates that they are the result of extended examination of records of these companies, inspection of the properties and consideration by competent experts of the various questions involved in an appraisal of this kind. These schedules were examined and checked by the defendant during a period of about six months pending the hearing of these cases. The record of the companies were open to the force employed by the defendant for that purpose, under the direction of an engineer selected by it, and while it is probable that in view of the large volume of records bearing upon the cost of construction of various items of the property, the defendant was not able to fully examine all the records in that regard, it appears that they were thrown open to it and opportunity offered for as full and complete examination of them as it elected to make. At the conclusion of this examination the engineer selected by the defendant appeared before the master and evi-
1803 dence produced by him is in the record. It is sufficient to say that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results

reached are not widely apart from those reached by the engineers of the railroad companies.

Evidence was also offered by the two companies in question of the values of their properties based upon computations from market prices of stocks and bonds for fairly representative periods. This method of ascertaining the value of railroad property seems to have the support of a number of decided cases, and is of value in the consideration of questions of this character.

The record contains evidence of the amount of outstanding stocks and bonds of these two companies, together with a full showing for recent years of current results of operation. There are in evidence exhibits showing gross revenues, operating expenses, taxes, net revenues, amounts of interest paid upon obligations, dividends paid, amounts appropriated from income for various purposes, and, in fact, all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures.

Of the methods made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved.

1804 In the determination of the issues presented by these cases, involving as they do rates upon a single item of traffic, the value of the total properties of these companies is of only indirect bearing. The defendant commission appears to have reached this conclusion and to be of that opinion because in a case of like character involving rates on lumber from southern and southeast points of production to the Ohio River and north thereof it held to that effect. (Central Yellw Pine Association v. Illinois Central Railroad Company, 10 I. C. C. 529.)

The master does not understand that these companies offer this evidence upon the theory that it will directly aid in the determination of the issues here involved. They do offer it for the purpose, as stated, of demonstrating that the return during recent years upon the fair value of these properties has not been and is not excessive; they argue that if the rates upon lumber and other forest products embraced within their tariffs filed November 1, 1907, are neither unjust nor unreasonable, the results of the operation of these companies justify the effort thus made to increase revenues to meet increased cost of operation.

In the conclusion at which the master has arrived it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds.

The evidence clearly shows that these lines of railroad are well located and maintained; that they are efficiently operated and occupy

a portion of the country from which it is reasonably plain that under normal conditions they may expect a constantly growing vol-
1805 ume of traffic; they seem to have, from the vitality of their own organizations, as well as that of the industries tributary to them, the cities, towns, and general character of the country through which they operate, all of the valuable elements ordinarily comprehended within the term "going concern," and from the fact that they have been established and in operation for many years and during recent years at least with fair results, they each have the advantage which flows from long and favorable relations with the shipping public over and above a new road or roads constructed or operated through the same territory. These considerations in every line of business indicate important elements of value over and above mere cost of construction, and justify the conclusion which is fortified by ample authority that there exist in these properties large elements of value of this character.

The defendant in these cases has directed attention to the annual reports of these companies and other forms of statistical information tending to prove favorable results from operation, and it is sufficient to say in considering the arguments thus advanced that they are largely supported by the statistics referred to, and lead to the necessary conclusion that the properties contain elements of value in large measure as a direct result of the successful operation referred to.

It may properly be said, however, in considering the arguments offered by the defendant that these companies have been able to pay interest and dividends at a fair rate and accumulate surplus funds which have been appropriated from income and reinvested in the property, that such conditions are necessary, within proper limits, in order to enable companies of this kind to meet the tremendous increases in cost of operation incurred in recent years and the growing demands upon them for increased facilities to acommodate the growing commerce of the country through which they pass. Upon
1806 the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case the results from operation of either of these companies were in any degree excessive.

On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames (169 U. S., 522), and subsequent decisions, if that were necessary or immediately germane to the issues here presented it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions.

CONCLUSIONS OF LAW.

Upon consideration, the master has adopted the following conclusions of law which, in his judgment, govern and control the decision of these cases:

(1) A just and reasonable rate within the meaning of the interstate commerce act is a rate which (a) furnishes to the carrier just compensation for the services rendered, and fairly, reasonably, and justly recognizes and considers his common rights and interests in the traffic under consideration; (b) which fairly, reasonably, and justly recognizes and considers the interest of the public in such traffic; (c) which fairly, reasonably, and justly recognizes and considers the interests of the shippers in such traffic, and (d) which on its face does not manifest or evince any arbitrary violation, perversion, or disregard of the spirit or intent of the interstate commerce law, but appears to have been made or promulgated fairly, justly, and reasonably in accordance with the fundamental principles of the law.

1807 (2) The Constitution guarantees just compensation for private property devoted to a public use, and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation cannot be predicated upon it.

(4) In determining the justness and reasonableness of the net returns to a railroad a principal consideration is the value of the property devoted to the public use; and in determining this value the reproductive value, or a just estimate of what it would presently cost to reproduce the properties as they presently stand, is of considerable material aid.

(5) But where the question under consideration is the justness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate.

1808 (7) The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts.

(8) It is, however, limited in the exercise of its authority, first, by constitutional limitations, second, by specific limitations contained in its organic act, and third, by the spirit and intent of its organic act and the fundamental principles underlying its organic act.

(9) An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted.

(10) Federal courts of equity have the power and are charged with the duty to relieve from orders of the Interstate Commerce Commission which deprive complainants of their property without due process of law or take it without just compensation, from orders which are beyond the delegated power of the commission, and also from orders which evidence so unreasonable and arbitrary an exercise of its power and which are so inherently inconsistent with and violative of the spirit and intent of the interstate commerce act as to be substantially without, though formally within, their delegated authority.

(11) An order which on its face is inherently inconsistent with the fundamental principles of rational justice and palpably violates and perverts the spirit and intent of the interstate commerce act,
1809 though in form within the limits of delegated power is in fact beyond those limits, and is an unlawful order, and one which results in taking of property without due process of law.

(12) On pages 39, 40, and 41 of volume one of the record, appears certain objections entered by the defendant to the admission of evidence in these cases. Objection number one subdivided into sections A and B object to any testimony which does not show that the rate fixed by the Interstate Commerce Commission is confiscatory of the property of the carriers within the meaning of the fifth amendment to the Constitution of the United States, and to any testimony which tends to show that such rate is otherwise (aside from the question of confiscation) unreasonable.

This objection is overruled for the reason that while a rate may not be confiscatory it may yet be so unjustly discriminatory and unduly preferential and may so arbitrarily violate the fundamental principles of rational justice and the spirit and intent of the interstate commerce act as to amount to the taking of property without due process of law; and any evidence which tends to show such a situation is admissible and can be considered by the court.

Objection number two is based upon the claim that the allegations of the bills are not broad enough to amount to an allegation of confiscation.

This objection is overruled. The bills allege that the rates fixed by the commission are so unremunerative and so far below what is just and reasonable as to be confiscatory. I think the allegations are broad enough to admit of proof of confiscation. The Constitution provides that no property shall be taken for public use without just compensation. The interstate commerce act provides that all rates shall be just and reasonable. The language of these two pro-
1810 visions means the same thing and by these two provisions of law a point is fixed below which a carrier can not be compelled to go, and above which it may not lawfully go. Anything less than

that which is just and reasonable will necessarily amount to confiscation and therefore when a rate is attacked on the ground that it is less than that which is just and reasonable it is in effect an allegation of confiscation and permits the courts to inquire into the rate to the extent of ascertaining whether or not it is so low as to be less than just and reasonable.

Objection number three is based on the claim that no new and additional evidence is admissible for any purpose unless the complainants have first presented or offered to present the same to the commission for its consideration, or in effect taken such proceedings as amount to an application for a new trial.

This objection is overruled upon the authority of the Court of Appeals for the Eighth Circuit in Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission (164 Fed. 645), wherein it is held: "It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to an ascertainment of what was determined by the commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but on the contrary the hearing may be de novo, and may include the taking and consideration of evidence other than that before the commission."

Objections 4, 5, and 6 are elaborations of the principles sought to be enforced in objection number three.

Objection number four proceeds upon the principle that no new or additional evidence is admissible unless it is what is known in law as newly discovered evidence; that is, evidence unknown to the complainants at the time of the hearing before the commission.

1811 Objections numbers 5 and 6 proceed upon the principle that no such newly discovered evidence can be offered unless it has previously been offered to the commission for its consideration and the commission has failed or refused to hear it.

The point of these objections is that it is unfair for a carrier to fail to take advantage of the opportunity offered under the law by the commission for a full hearing and thereafter apply to the courts to protect it against orders which might never have been entered had the carriers so taken advantage of their opportunity for a full hearing.

In such a case a carrier would be without any standing in a court of equity, for he would not be coming into a court of equity with clean hands. But where it appears that a carrier honestly and in good faith has presented his case to the commission on a complaint, and in good faith presented to the commission for its consideration all the evidence then in its possession, it ought not to be, and is not, precluded from presenting to the courts in a suit for an injunction any other evidence relative and material to the suit of which it may avail itself. The objection seems to proceed upon the theory that a hearing before the commission is like a suit at law, and that the commission's decision is dependent upon the record, and that to disturb the decision by other evidence can only be done by the presenting of

newly discovered evidence not within the knowledge and possession of the carriers at the time of the trial, and that the decision can only be disturbed on this ground by a proceeding before the commission analagous to a motion in a suit at law for a new trial upon the ground of newly discovered evidence.

This theory is quite at variance with the defendant's other theories and claims as to the powers of the commission. The commis-
1812 sion is not confined in its decision to the consideration of the particular evidence submitted to it in any hearing, but is supposed to possess all knowledge and wisdom pertaining to the matters under consideration, and is at liberty to use all knowledge it may possess or obtain by any means both within and without the record. And the evidence actually submitted to the commission in any case is as a rule but a small part of the knowledge upon which the commission bases its decision. We think the court ought not to decline to hear a complainant on the ground that he has not first presented all his case to the commission, unless it appears that his failure in this respect amounted to a fraud on the commission and was a deliberate neglect to avail himself of the opportunities offered by the commission for a full hearing. Nothing of the kind appears in this case, and the objections to the new and additional evidence are overruled.

DISCUSSION.

"Section 1 of the act to regulate commerce" provides, among other things, "all charges made for any service rendered in the transportation of passengers and property * * * or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

This section further imposes upon common carriers the duty to furnish transportation at "just and reasonable rates applicable thereto."

Section 2 defines, prohibits, and declares unlawful any unjust discrimination between persons by means of special rates, rebates, drawbacks, or other devices, and section 3 declares it to be unlawful for any common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company,
1813 firm, corporation, or locality, or any particular description of traffic in any respect whatever, or to subject such persons, entities, localities, or particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 15 provides that the commission is authorized and empowered and it shall be its duty whenever, after a full hearing upon a complaint made as provided in section 13 of the act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property as defined in the first

section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or discriminatory, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what practice or regulation in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that such carrier shall cease and desist from such violation to the extent to which the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rates or charges so prescribed, and shall conform to the regulations or practice so prescribed. An analysis of this power and authority resolves it into three divisions. The commission has power to interfere (a) when rates are unjust and unreasonable,
(b) when the rates and also the practices and conduct of the
1814 business are unjustly discriminatory or unduly preferential,
and (c) when specific requirements of the statute are violated.

And the remedies which they are authorized to determine and prescribe for the future are: (a) Just and reasonable rates, (b) just, fair, and reasonable regulations and practices, and (c) orders compelling the abandonment of illegal practices consisting in violations of specific requirements of the statute.

A principal question in these cases is as to the extent of the powers thus conferred on the Interstate Commerce Commission and particularly as to the extent of the powers stated in subdivision (a).

While the bills allege that the rates fixed by the commission are so low, unjust, and unreasonable as to result in an undue preference of the lumber traffic over other descriptions of traffic and discrimination in its favor against other species of traffic, still they nowhere point out any particular class or species of traffic which is discriminated against, and nowhere point out where, to what extent, or in what manner such discrimination is had, nor state any facts upon which discrimination and undue preference can be predicated.

The substance of those allegations of the bills with which the master is concerned is that the rates fixed by the commission are so low and unremunerative as to be unjust and unreasonable, and therefore the commission exceeded their power in prescribing them, and are taking the carriers' property without due process of law, and further that because the rates are unjust and unreasonable and less than what is just and reasonable they are confiscatory and in violation of the constitutional guaranty of just compensation.

It will be seen therefore that the cases turn almost entirely upon
the extent of the power conferred upon the commission to fix
1815 rates for the future. The defendant claims that in the matter
of fixing rates for the future under the circumstances and within the statutory requirements conferring jurisdiction to inquire (such as complaint, notice, full hearing, etc.), their power is as full, plenary,

and absolute as is the power of Congress itself: that its reasons, motives, and discretionary powers may be as broad and plenary as those of Congress, and that its conclusions can only be attacked on constitutional grounds as a confiscation.

The complainants on the other hand claim that this power is a limited power, limited not only by the constitutional guarantees of just compensation and due process of law, but limited also by the terms and language of the statute itself, and that if it can be shown that any rate fixed by the commission is not just and reasonable, but is unjust and unreasonable in and of itself, it is an unlawful rate and beyond the power of the commission to prescribe or enforce.

The solution of this proposition depends entirely upon the interpretation to be put upon the words just and reasonable. If the interpretation of these words is to be based upon their widest sense, and upon all the reasons and considerations which Congress might entertain in the enactment of a statute including all grounds of public policy and all those considerations upon which rest the exercise of police power, then the position of the defendant is correct.

If, on the other hand, they are to be interpreted in a common and limited sense, and in a business sense, as applied to the business transactions between shippers and carriers, then this contention of the defendants is not correct, and the court may determine whether or not these rates are in truth and in fact in and of themselves just and reasonable and therefore lawful, or unjust and unreasonable, and therefore unlawful, and in the latter event enjoin their enforce-
1816 ment as an unlawful and unwarranted exercise of power which amounts to the taking of property without due process of law.

What then is a just and reasonable rate within the meaning of the interstate commerce act?

In the first place the Constitution supplies an absolutely essential and necessary ingredient or characteristic. It guarantees just compensation for private property taken for a public use and any rate which violates this guaranty is a void rate. In Missouri, Kansas & Texas R. Co. v. Interstate Commerce Commission, a case from the Eighth Circuit in 164 Fed., 645, the court said: "Its (the commission) determination or action does not and cannot preclude judicial inquiry into the justness and reasonableness of the rates within the meaning of the constitutional guaranty, for that is a judicial question." "Neither Congress nor any legislative or administrative body acting by its authorization can competently establish rates for the transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all circumstances is just and reasonable, since such action would deprive it of its property without due process of law and would be a taking of its property for public use without just compensation in violation of the fifth amendment to the Constitution." Just compensation means the fair and reasonable value of the property taken. In condemnation proceedings it means the fair and

reasonable value of the property for the highest use to which it can fairly and reasonably be put.

Applied to transportation rates it must mean the fair and reasonable value of the particular service rendered, provided such services are rendered under normal circumstances. It is frequently said that regard must also be had to the rights of the public and to the interests of the shippers. In my judgment this means that a rate may
1817 not be so high as to prevent the free access by the public to those commodities which they desire and require; or, in other words, so high as to prevent the free movement of the traffic, nor may a rate be so high as to practically divert a shipper's profit into the treasury of the carriers, and thus destroy the shipper's business. But these considerations are in a measure secondary, and can only apply after the first requisite of just compensation has been complied with. The prime consideration is the constitutional consideration of just compensation to the carrier. He is devoting his labor and property to a public use, and under the law is compelled to do so. He may not refuse the traffic. He must respond to its demands. But for his service and his property he is entitled to just compensation, and no law can deprive him of it.

It is further said that just and reasonable rates need not necessarily guarantee a profit to the carrier. But this is simply another way of applying and illustrating the rule that a person is entitled to the fair and reasonable value of his property for the highest use to which it can reasonably and fairly be put.

Of course a poorly and injudiciously projected road, which is not a reasonable commercial necessity, and is not commercially justified, and which is poorly and wastefully operated, cannot expect to extort a profit out of the patrons which may be necessarily dependent upon it.

It is the value of the property for a reasonable use that is to be determined. An expensive house situated in the midst of a swamp would add no considerable value to the property, and the owner would not be entitled to a compensation for the cost of his house. A house well located commercially may by ill usage depreciate,
1818 and in determining its value for any purpose the expense of restoration would have to be considered and deducted.

Reasonable rates are therefore always to be based upon normal conditions, and determined with a view to whether or not the road is reasonably justified as a commerical enterprise, is a reasonable commercial necessity, is normally operated with reasonable economy and skill.

But when all is said of those characteristics of a just and reasonable rate, it is still true that the distinguishing characteristic of a just and reasonable rate is just compensation, and that these other characteristics are what is known in logic as incidental characteristics.

The Constitution fixes this absolute point below which no carrier can be compelled to go. The interstate commerce act does not permit

him to go above it. Anything more than this is a violation of this law, and anything less is a violation of the constitutional rights.

The next question is, how far does this distinguishing characteristic extend?

Inasmuch as it is the entire body of the property which is devoted to the public use, does this characteristic extend merely to the entire body of net revenues returned to the carriers, or does it extend to and characterize each particular rate and segregated element of the income?

In theory and on principle this latter proposition ought to be true. Each rate ought in and of itself, in order to be just and reasonable, furnish just compensation for the service rendered, and if each rate were just and reasonable the entire body of net returns would also be just and reasonable. In Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, cited above, the court said: "Rea-
sonably interpreted the statute, by which alone the Interstate
1818a Commerce Commission derives its power, unmistakably re-
quires that all rates prescribed thereunder shall be just and reasonable within the constitutional guaranty, and also that they shall not be unjustly discriminatory or unduly preferential; and those requirements plainly operate as limitations upon the power of the commission."

No doubt it is the spirit and intent of the interstate commerce act that each particular rate shall be in and of itself a compensatory rate, and that the theory of the statute is that if each rate is in and of itself just and reasonable the entire body of net returns will also be just and reasonable.

But because of the many stubborn and obtrusive difficulties in the way of the practical application of this proposition, because it is practically impossible with any degree of satisfactory accuracy to determine the cost of a particular traffic, or the proportion of the company's property devoted to its use, or whether or not in and of itself it yields a profit, and because also the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because, also, it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy, it has been held, in actions based upon the charge of confiscation through the reduction of a single rate or segregated portions of the general body of business, that this distinguishing characteristic of just compensation does not extend to a single rate, and need not be considered in determining whether or not it is just and reasonable, beyond the question as to whether or not it so affects the general body of net returns as to reduce them to less than just compensation.

In other words, confiscation cannot be predicated upon a single
rate in and of itself, particularly because it is impossible
1818b to ascertain the true facts in reference thereto, but can only be
predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness

and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns.

It is contended that the following cases, decided by the judges of the Eighth Circuit and the Supreme Court, are authorities against this contention and establish the doctrine that a rate must be compensatory in and of itself. (Southern Ry. Co. v. St. Louis Hay Co., 214 U. S., 297; Stickney v. Interstate Commerce Commission, Supreme Court, January 10, 1910; Peavey & Co. v. Union Pacific Ry. Co. (Eighth Circuit), 176 Fed., 409.)

It will be observed, however, that those cases involved charges for incidental services rendered by and to carriers in aid of transportation, which charges are by the terms of the interstate commerce act required to be stated separately. The charges in the hay case were charges for a special privilege "in no sense a part of the transportation and outside thereof."

The charges in the Stickney and Peavey cases were charges paid by the carriers to third persons who rendered services in aid of transportation, and section 15 of the interstate commerce act makes it the duty of the commission to determine the value of those services in and of themselves at a just and reasonable rate.

Manifestly an order made in the exercise of this power, absolutely or in part destroying an incidental charge considered to be just and reasonable in and of itself, is confiscation of the grossest kind, 1819 in addition to being a gross abuse and perversion of authority and the taking of property without due process of law.

It seems clear, therefore, that in cases involving a single rate, such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out.

The defendant claims that this conclusion must necessarily determine these cases in its favor. There is no evidence in the record clearly showing or, indeed, attempting to show, that this lumber rate prescribed by the commission will so affect the general body of net returns as to materially reduce them from what they have been, and it is conceded on all sides that the carriers are and have been fairly prosperous, and that their net incomes have been fairly satisfactory at least.

The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost.

And the defendants claim that no confiscation having been shown it necessarily follows that the rates are just and reasonable.

It must be remembered, however, that this rule confining the inquiry as to confiscation in the matter of a single rate to the relation and effect of that rate to and upon the general body of net returns is not a rule based upon theoretical justice, but is a rule of convenience compelled by the exigencies of the situation. It is founded upon compulsion, and not upon principle. Furthermore, like all
1820 other rules of law, it is intended and promulgated in the interests of justness and reasonableness, and not to promote injustice and unreasonableness. It can not be used as a shield behind which the commission may hide, and with which they may protect themselves in the arbitrary and inequitable exercise of their powers. It is true the commission is an administrative body, exercising delegated legislative powers, and that the wisdom and expediency of the lawful discharge of their administrative opwers may not be questioned by the courts.

Nevertheless, it must be remembered that the power of the commission to fix and determine rates is a limited power. In Missouri, Kansas & Texas Ry. Co. v. Interstate Commerce Commission, 164 Fed. 645, the court said: "Power to determine and prescribe what are just and reasonable maximum rates to charged in interstate commerce is in a limited way conferred on the Interstate Commerce Commission by section 15 of the interstate commerce act."

It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws.

But an administrative body is not so free to do as it pleases, but in addition to those specific limitations pointed out by the Constitution and the particular provisions of its organic law, is always and forever limited and controlled by the spirit and intent and the fundamental principles of the organic law creating it. It may not, therefore, while acting within the forms of its delegated powers, promulgate rates and regulations which in effect violate the spirit and intent of those powers.

It is the intent and purpose of the interstate commerce act that the commission shall determine and prescribe just and
1821 reasonable rates, just and reasonable regulations, just and reasonable conduct and practices, and shall prevent unjust discrimination and undue preferences.

It shall not make or permit any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or particular description of traffic "in any respect whatsoever," nor shall it subject such persons, entities, localities, or particular descriptions of traffic, to any undue or unreasonable prejudice or disadvantage "in any respect whatsoever."

They must not only be just and reasonable so far as the matter of compensation is concerned, but must be further just and reasonable in all respects. They must exercise their power in a just and reasonable

manner and arrive at their conclusions through just and reasonable processes, and those conclusions must be just and reasonable in all respects. They may not be unjust and unreasonable in any respect whatsoever. They cannot content themselves with arriving at a result technically and in terms and form just and reasonable through an arbitrary, unjust, and reasonable exercise of their powers. Justness and reasonableness must permeate, tincture, and characterize the entire proceeding, and the result must also be in truth, in spirit, and in fact just and reasonable, and not merely so in form and terms.

A rate may be unassailable on constitutional grounds, may be absolutely free from confiscatory features, and yet in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate commerce act.

A law passed in the interests of and to promote justness and reasonableness may not be used to perpetrate injustice and unreasonableness any more than the statute of frauds can be used as an instrument to perpetrate fraud.

1822 For this reason there does inhere in the Federal courts of equity power to review rates made by the commission above and beyond constitutional questions and questions as to the technical limits of delegated power, and to inquire whether or not the delegated power has been exercised in a just and reasonable manner, and within the true spirit and intent of the law, and to relieve from such orders as, though not technically confiscatory or discriminatory and not technically beyond the terms of the statute, are nevertheless so inherently inconsistent, unjust, unreasonable, and violative of common right as to be on their face unjust and unreasonable orders in the common sense of the terms.

In the case of the Interstate Commerce Commission v. Illinois Central R. R. Co., decided by the Supreme Court January 10, 1910, Mr. Justice White uses the following language: "Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider, (a) all relevant questions of constitutional power and right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz, whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power."

In Louisville & Nashville R. R. Co. v. Interstate Commerce Commission, decided April 9, 1910, by the Circuit Court for the
1823 Western District of Kentucky, the court used this language: "If the order were so unreasonable or so manifestly unjust as

to induce the belief that the fundamental principles of rational justice had been disregarded * * * it would be our duty to prevent such a consequence by awarding an injunction." In Peavey & Company v. Union Pacific Railway Company, recently decided by the judges of the Eighth Circuit, the court said: "The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts. But the power is vested in and the duty is imposed upon the Circuit Courts to relieve from orders of the commission which * * * though in form within its delegated power evidence so unreasonable an exercise of it that they are in substance beyond it." In Stickney v. Interstate Commerce Commission, (164 Fed. 638, 644, 645), the court said: "The finding of facts on controverted and conflicting evidence by such bodies, when not brought about by fraud or mistake, is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded, or established without dispute admit of but one legal conclusion and a different and erroneous one is reached by reason of a misconception and misapplication of law by such bodies, their action is subject to review and may and ought to be avoided by the courts."

These decisions do not mean that the courts may substitute their own opinion for that of the commission. They do mean, however, that whenever an order is so inherently inconsistent with and violative of the fundamental principles of rational justice as to clearly evince an arbitrary disregard for and perversion of the true spirit and intent of the interstate commerce act, it is an unlawful and unauthorized order, and one from which the courts have power and are bound to grant relief.

1824 Applying the principles arrived at in the foregoing discussion to the facts exhibited in the record, I am compelled to the following conclusions:

There is no evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations.

It does, however, appear that they are very low rates, and unusually favorable to the shippers and to the public.

In restoring the superseded rates to the Pembina–Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point.

If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates.

The difficulties and expenses of transportation over the Union Pacific line and the northern lines are fairly equal. The route over

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the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates.

The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable.

If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly
1825 prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities.

It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised.

These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5 cents per one hundred pounds differential to Chicago, while the northern lines are allowed 10 cents. And the 10-cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific Road to make the haul from Omaha to Chicago for 5 cents and allow the north-
1826 ern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order.

In determining the issues before it the defendant ordered the rates from the coast territory to the so-called Pembina–Port Arthur line, and destinations west thereof, restored to the basis in existence immediately prior to November 1, 1907. To the territory east of that line it permitted an advance not to exceed 5 cents per hundred pounds over the rates in effect immediately previous to November 1, 1907. The defendant in this way presented the matter in a double aspect

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and in the consideration of the questions involved in these cases, the master has followed the same course and will state his conclusions in that order, that is to say:

(1) Does the evidence justify or require that the orders of the defendant, restoring the rates in existence prior to November 1, 1907, on and west of the so-called Pembina–Port Arthur line shall be enjoined, that is to say, does the evidence, giving to it all of the weight to which it is fairly entitled, overthrow the presumption that the orders in that regard are valid or, applying the test indicated by the recent decision of the Supreme Court of the United States in Interstate Commerce Commission v. Illinois Central Railroad Company, et al. (— U. S., —), does the evidence establish that "the assertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power?"

(2) Turning to that portion of the orders setting aside the rates filed by the carriers and effective on November 1, 1907, to points east of the so-called Pembina–Port Arthur line, and, in lieu thereof, permitting an advance over the pre-existing rates not to exceed 5
1827 cents per hundred pounds, and applying the same tests above referred to, are the results such as to lead to the necessary conclusion that the injunctive order of this court should issue?

Dealing with these questions in the order stated, it appears that in considering the conclusion reached by the defendant the rate from the coast district to Omaha may be taken as illustrative.

The short line distance from Portland to Omaha is stated by the commission in its decision in the so-called Oregon case (No. 1327) to be 1,799 miles. From the exhibits offered before the commission it appears that this is substantially correct, and that the 50-cent rate restored by the orders of the commission results in revenue of 5.56 mills per ton mile. To Kansas City, another Missouri River point to which the same 50-cent rate applies, the distance appears to be 2,030 miles, with a resulting ton mile earning of 4.92 mills. Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low. That is not the duty of this court, however, and the action of the commission in ordering these and all other rates to this so-called Pembina line restored, and thereby approving them as just and reasonable, is to be tested by the rules herein above referred to.

The revenue per ton mile thus returned is much below the average revenue per ton mile derived from all commercial business on the lines of either of the complainants. It is below the average revenue per ton mile from lumber on the Union Pacific system for any of the recent years. It is substantially below average earnings per
1828 ton mile on numerous other commodities, many of which may

be denominated low grade in their character, moved over the Union Pacific system from Portland and coast points to Omaha and other eastern terminals. In the opinion of witnesses produced by the carriers, including the freight traffic manager of the Union Pacific Railroad Company, this 50-cent rate is unreasonably low. From what has been said above it cannot be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases, but it is the finding and conclusion of the master that the evidence upon this branch of the cases is not so clear and conclusive under the rules above referred to as to justify a recommendation that an injunction be issued against that portion of these orders.

The same finding and conclusion is reached regarding the rates, generally to destinations on and west of the so-called Pembina–Port Arthur line. The master, therefore, recommends that the prayer for injunction against the orders of the defendant, disapproving the rates filed by the complainants to destinations on and west of the Pembina–Port Arthur line and requiring the restoration of the rates to these destinations in effect immediately prior to November 1, 1907, be denied.

In reaching its conclusion that the rates in question to Omaha and other points on the Pembina–Port Arthur line should be restored to the basis in effect just prior to November 1, 1907, it is to be presumed that the defendant acted under the authority delegated to it by the act to regulate commerce and the amendments thereto; it is to be presumed that thus acting under the delegated authority the defendant approved and established the pre-existing rates as just and reasonable for the service involved. In fact, an examination of the opinions and orders of the defendant in these cases clearly shows that such was the judgment of the defendant. As already seen,
1829 the defendant is without power to establish rates upon any other basis and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved the pre-existing scale of rates to this line was in the opinion of the defendant just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative, and we are, therefore, furnished in these cases by the defendant itself with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina–Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Commerce Commission v. Illinois Central Railroad Company et al. (supra) is not presented? Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per

hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant?

This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a greater distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable.

1830 In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distance may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines.

It is therefore not unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded.

It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seem to have been the result of competitive and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between Omaha

1831 and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves west-bound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in

the coast territory, as well as the Spokane territory, on the other, should normally be upon an equal basis.

Thus the commission said in the case above cited:

"There is no condition of construction or operation, or financial result, which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland, than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

While, as stated, it is true that this observation relates to west-bound traffic, and perhaps is not conclusive in considering this east-bound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the east-bound traffic to Omaha, as compared with the east-bound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration.

The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between
1832 these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike.

Before the commission in these proceedings, the complaining shippers urged that there should be equal rates upon this lumber traffic from the coast to St. Paul and to Omaha. These shippers urged that the 40-cent rate in effect to St. Paul and Minneapolis prior to November 1, 1907, should be applied to Omaha and the Missouri River territory generally, and it is fairly to be inferred that this position was taken in accordance with a conviction that conditions commercial, as well as otherwise, were so alike as to require equal rates.

From the deliberate conclusion, however, reached by the defendant that the 50-cent rate was just and reasonable upon this traffic to Omaha it is plain that the 40-cent rate asked by the shippers could not be.

Is it, therefore, possible in view of these various considerations to support the order of the defendant requiring the Northern Pacific and the Great Northern lines to withdraw the 50-cent rate made applicable by the tariffs of November 1, 1907, to St. Paul and common territory and to install instead a rate of 45 cents?

As its reasons for permitting an advance east of the Pembina–Port Arthur line, the defendant said in the so-called Washington case (No. 1329):

"To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton mile accruing to the carriers from this traffic."

The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pem-

1833 bina–Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina–Port Arthur line and as already shown traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which, under the commission's orders take the 45-cent rate, is generally greater than the average distance between points where under the commission's orders the 50-cent rate applies.

The revenue per ton mile, however, according to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50-cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seem to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50-cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina–Port Arthur line seem to it to be of sufficient weight to authorize
1834 their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable.

Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50-cent rate in and of itself is in anywise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate.

The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience in railroad traffic affairs, and these witnesses expressing their opinion and adding reasons therefor were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the preexisting rates, as well as the proposed rates and earnings therefrom,

with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results, while instructive as showing approximate or average results, are not sufficiently close to the
1835 mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars west-bound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded.

A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates approved by the commission to points on and west of the Pembina–Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line, and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina–Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported, and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders
1836 in so far as they displace the rates contained in the tariffs of November 1, 1907, to points east of the Pembina–Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the preexisting rate, should be set aside and enjoined.

By the effect of the orders of the defendant finding the rates to points east of the Pembina–Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations

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further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

A large amount of testimony appears in the record, much of which was before the defendant and some of which was added in the hearings before the master, relating to the circumstances and conditions under which the rates on lumber between St. Paul and similar points and Chicago and points on the Mississippi River, including St. Louis, have been in the past made and controlled. It is said, and seems amply supported by the proof, that the rate of 10 cents from St. Paul to Chicago is made in competition with carriers of lumber
1837 on the Great Lakes from Duluth to Chicago, and to some extent, so far as points on the Mississippi River are concerned, with carriers transporting lumber upon the Mississippi River. In the past it is probable that the lumber traffic on the Mississippi River had a larger effect upon the rates of the railroad lines competing therewith than at the present day, but from the history of the development of the lumber industry in the north is plain that the rail rates from northern points such as St. Paul and Duluth to Chicago and Mississippi Valley points to and including St. Louis, have always been and are to-day affected and held to a low basis by the various forms of water competition referred to. The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points cannot be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. The 60-cent rate estab-

lished in the tariffs on November 1, 1907, to Chicago applied
1838 via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the record to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha, would be unjust or unreasonable for the transportation of this traffic from Omaha to Chicago. Considering all of the facts relating to the character of the 10-cent rate above referred to in its application between St. Paul and Chicago for the distance involved and under the conditions disclosed in the record, it cannot be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can be sustained, and for the various reasons herinbefore referred to
1839 it is plain that this rate, whether applied via St. Paul or via Omaha, neither was nor is unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago.

There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions generally affecting rates to all such destinations; in fact in the orders of the defendant permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina–Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina–Port Arthur line other than as above indicated.

In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants and effective November 1, 1907, to points east of the so-called Pembina–Port Arthur line to be unjust and unreasonable cannot be approved; that the orders of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons cannot be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points
1840 east of the so-called Pembina–Port Arthur line to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof be set aside and annulled.

By the order in the so-called Potlatch case (No. 1346), which is one of the orders sought to be enjoined in these proceedings, the defendant fixed rates from points in eastern Washington, eastern Oregon, and Montana, to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907.

In the submission of testimony and in the arguments before the master, the questions presented by these cases have been considered principally with regard to the rate on fir lumber. That rate has been treated by both complainants and defendant as typical, and it has been so accepted and treated by the master in the foregoing findings. The relation between that rate and the rates on other lumber, shingles, and other forest products to points east of the Pembina-Port Arthur line was the same previous to November 1, 1907, and in the tariffs made effective on that date; and the orders of the
1841 commission left that relation unchanged. No question is made by either party as to the fairness of this relation. From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of the Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended.

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In accordance with the foregoing conclusions the master recommends the entry of decrees in each of the said cases in the form hereto attached.

FREDERICK N. DICKSON,
Special Master.

ST. PAUL, MINN., *Aug. 27, 1910.*

Entered. Filed August 27th, 1910. Henry D. Lang, clerk.

1842 United States Circuit Court for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and Oregon and California Railroad Company, *vs.* INTERSTATE COMMERCE COMMISSION.	Equity. No. 883.

This cause came on to be heard at this term and was argued by counsel; thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows:

That the order of the defendant in the proceeding brought before it entitled Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al., being I. C. C. No. 1327, dated June 3, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in the proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 28, 1908, and as further amended September 1, 1908; and the order of the defendant in the proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in the proceeding brought before it entitled Potlatch Lumber Company et al., v. Northern Pacific Railway Company
1843 et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, in so far as said orders, or any of them, require the complainants herein to cause and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorehead and Breckenridge, Minnesota;

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Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Missouri; and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
United States Circuit Judges.

1844 And thereafter on the same day the following report of rulings upon exceptions of complainants and defendant was filed in said cause, to wit:

1845 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 883.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

1846 By order of the court above named, entered therein on the 13th day of February, 1909, the above entitled causes were referred to the undersigned, as special master in chancery,

to take and report to said court the evidence, to examine the same, to make necessary computations, to find and state the facts in said causes, and to report advisory conclusions of law and recommend a proper form of decree therein.

Pursuant to said order, the testimony in said causes was taken and has been returned and filed in said court. And after hearing arguments of counsel, and on consideration, the undersigned, as such special master, did, on the 22nd day of July, 1910, pursuant to the terms of said order, exhibit to counsel his preliminary report and delivered to them copies thereof.

Thereupon, upon stipulation of the parties, it was ordered that said respective parties file with the undersigned on or before the 19th day of August, 1910, their objections and exceptions to said preliminary report, if any they had, and upon the 19th day of August, 1910, the defendant in said causes filed with the undersigned, exceptions, a true copy of which is hereto attached and marked "Exhibit A," and the complainants filed with the undersigned, exceptions, a true copy of which is hereto attached and marked "Exhibit B."

After hearing arguments of counsel and upon consideration, the master rules as follows upon said exceptions:

Defendant's exception No. 1 is overruled for the reason that the matter therein excepted to is fully covered in the specific finding of fact No. IV, and the suggested finding of fact is partial and unfair.

Defendant's exception No. 2 is overruled. The difference between the finding and the suggested finding is one of degree, and in the master's judgment the finding excepted to is amply sustained by the evidence.

Defendant's exception No. 3 is overruled. The suggested
1847 finding that at the time of the installation of the 40-cent rate it was not known whether there would be an empty east-bound car movement is not sustained by the evidence, and under the circumstances existing at that time is obviously untrue.

Defendant's exception No. 4 is allowed, and the master's report modified accordingly.

Defendant's exception No. 5 is allowed, and the master's report modified accordingly.

Defendant's exception No. 6 is overruled. The finding objected to is sustained by the evidence and the suggested finding is amply covered in other portions of the report.

Defendant's exception No. 7 is overruled, for the reason that it is not sustained by the evidence.

Defendant's exception No. 8 is overruled. The finding objected to is, in the master's judgment, amply sustained by the evidence, and the suggested finding that there is no satisfactory explanation of the sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound car mileage in the year ending June 1, 1907, is not true. In the master's judgment the explanation was ample.

Upon argument, the defendant withdrew exception No. 9, objecting to the recital of the testimony of R. I. Farrington. The finding suggested in exception No. 9 is refused as not being sustained by the evidence.

Defendant's exception No. 10 is refused, as not being sustained by the evidence.

Upon argument in reference to defendant's exceptions Nos. 11 and 12, it was agreed that the requirements of these exceptions would be met by inserting the percentages of dividends paid in recent years by the camplainants' roads and the master's report has been modified accordingly.

Defendant's exception No. 13 is overrruled. To say that the 50-cent rate involved was not established by the order of the commis-
1848 sion because it had theretofore been in effect, is a quibble. Upon the consideration of the case, it was the commission's duty to prescribe the maximum rate for the future, and they did prescribe this rate and thereby established it.

Defendant's exception No. 14 is overruled. The finding objected to is amply sustained by the evidence.

Defendant's exceptions Nos. 15 to 24, inclusive, are each and all of them exceptions to various findings of fact in the master's report, and are objected to on the ground that they are not sustained by the evidence, or are immaterial. Each and all of these exceptions are overruled by the master for the reason that in his judgment they are all amply sustained by the evidence and are material and relevant.

Defendant's requested finding of fact No. 1 is refused on the ground that it is not sustained by the evidence.

Defendant's second requested finding of fact is refused on the ground that it is not sustained by the evidence.

Defendant's third requested finding of fact is refused. The application of a 45-cent rate referred to in the second paragraph is not as stated in said paragraph and the requested finding is not sustained by the evidence.

The defendant's fourth requested finding of fact is refused on the ground that it is immaterial and does not support the conclusion therein arrived at.

Defendant's fifth requested finding of fact is refused on the ground that it is not sustained by the evidence. While the master has found that the general net returns of the carriers have been fairly satisfactory, and has also found that there is no evidence in the case tending to show that the rates charged upon lumber were confiscatory, he has also found that the rates charged upon lumber were very low rates. The finding herein amounts to an affirmative finding that the carriers have been receiving adequate compensation for
1849 their lumber traffic. In the master's judgment the evidence does not sustain such finding.

Defendant's sixth requested finding of fact is refused, because not sustained by the evidence.

Defendant's seventh requested finding of fact is refused. While some of the statements therein contained are true, the finding, as a whole, is immaterial.

Defendant's eighth requested finding of fact is refused as immaterial and already covered by the findings of fact. The master has expressly found that there is no evidence showing the relation and effect of the lumber rate upon the general body of net returns.

Defendant has filed 37 specific exceptions to the master's conclusions of law, numbered 1 to 37 inclusive, in which defendant takes exception to the conclusions which the master has arrived at in his report. All these various conclusions assailed by these exceptions are sufficiently explained in the master's report and said exceptions are each and all of them overruled for the reason stated in the report.

Exception No. 35 of the conclusions of law raises the question whether or not the court has the power to modify the commission's orders in the manner attempted in the decrees recommended herein, it being the contention of the defendant that the court has no power to do anything further than either to enjoin the commission's orders in toto, or sustain them in toto.

This exception is specifically overruled. The commission dealt with the rates in question in a twofold manner, dividing their application by the so-called Pembina–Port Arthur line and applying a different rule to the territory east and west of said line. If this is a justifiable basis of division, the court has a right to deal with the matter on such basis.

Referring to complainants' exceptions, exception 1 is par-
1850 tially allowed, and the master's report has been modified to the extent of limiting the period covered by said finding to a period beginning in the year 1901. Aside from this modification the exception is overruled.

Exception II is overruled. The master adheres to his original conclusions in this respect and thinks that the reasons for his position are sufficiently explained in his report.

Exception III is also overruled for the same reason.

Exception IV is also overruled for the same reason.

Exception V is also overruled for the same reason.

Exception VI is also overruled for the same reason.

Herewith the master files his final report of said causes, containing the modifications allowed hereinbefore.

Dated at St. Paul, Minn., this 27th day of August, 1910.

FREDERICK N. DICKSON,
Special Master in Chancery.

1851 EXHIBIT A.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company and Oregon, California Railroad Company, complainants, No. 883.

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon Railroad & Navigation Company, complainants, No. 884.

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company and Southern Pacific Company, complainants, No. 885.

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

Objections and exceptions taken by the above named defendant to the report of the special master herein, to whom these cases were referred to take proofs and report thereon.

CHARLES C. HOUPT,
United States Attorney,
LUTHER M. WALTER,
Special Assistant United States Atty.,
Solicitor for Defendant.

1852 Comes now the Interstate Commerce Commission, defendant in the above named cases, by its solicitors and objects to the report of Hon. Frederick M. Dickson, special master herein, and excepts to the findings of fact and conclusions of law hereinafter set out.

(1) For that the master erred in that part of his report, page 12, wherein he stated:

"For the purpose of providing loads for the east bound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul."

The master should have found substantially as follows:

"For the purpose of providing additional revenue and believing that 40 cents was reasonable compensation to begin with, the railroads installed the old 40-cent rate to St. Paul." (Rec., 1274, 1275.)

(2) For that the master erred in the following statement, page 12:

"The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry."

He should have found:

"The lumber industry in the coast district has grown to enormous proportions and has become a prosperous industry." (Rec., 1045, et seq.)

(3) For that the master erred in the statement of his finding of fact IV, page 15, wherein he stated:

"The superseded rates were made voluntarily by the carriers in 1893, avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads and more particularly and immediately for utilizing an east bound empty car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well defined east bound empty car movement from the coast."

The master should have found:

"The superseded rates were made voluntarily by the car-
1853 riers in 1893, as alleged at the hearing, for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads which would furnish adequate revenue under the circumstances. The 40-cent rate was first made by the Great Northern Railroad and was announced several months prior to the date when the railroad was opened for business from Seattle. At the time the 40-cent rate was established it was not known whether there would be an empty eastbound car movement." (Rec., 1274, 1275.)

(4) For that the master erred in line 11, page 17, wherein he used the word "mills." He should have used the word "materials:" (14 I. C. C., 4.)

(5) For that the master erred in failing to insert after the word "feet," in line 15, page 17, the following:

"Valued at the mills at $30,000,000.00." (14 I. C. C., 4.)

(6) For that the master erred in the finding, page 19, first paragraph:

"At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered

in arriving at the causes of the depression then existing in the lumber business."

The master should have found:

"Even before the financial depression was felt on the Pacific coast the lumber industry was greatly depressed and operations were largely decreased." (14 I. C. C., 7; Rec., 402.)

(7) For that the master erred in failing to insert after the word "cent," line 3, page 21, the following:

"At the time the 10-cent rate was established to St. Paul the empty car movement was not a fact to be considered in *in* making the rate." (Rec., 1274, 1275.)

(8) For that the master erred in his finding, beginning line 4, page 22, as follows:

"This sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound loaded car mileage in the year ended June 1, 1907, was, however, not normal, but due to tem-
1854 porary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months."

The master should have found:

"There is no satisfactory explanation of this sharp and sudden decrease in the percentage of east-bound loaded-car mileage over west-bound car mileage in the year ending June 1, 1907. The complainants, however, advance the theory that it was occasioned in a large degree by the carriage of supplies for the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, to storms, snowfall, and excessive cold weather in the winter of 1906 and 1907. There is no evidence as to the empty car movement or the movement of east or west bound loaded cars during the years ending June 1, 1908, and June 1, 1909; nor is there any evidence as to the cost of handling, or the revenue resulting from, handling the lumber traffic subject to the order complained of in these cases. The evidence to show these facts is all in the possession of the complainants." (14 I. C. C., 16, 33.)

(9) For that the master erred in the following finding, beginning line 2 from the bottom of page 22:

"This increase is fairly illustrated by the testimony of the witness, R. I. Farrington, relating to the cost of operation of the Great Northern Road. He testifies: 'Taking the year 1895 as 100 per cent, the cost per freight train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course, in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as 100 per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Conse-

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quently, it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895." (Equity Rule 76.)

The master should have found instead thereof:

"While the cost of operation has constantly increased, the economy of operation has kept pace therewith. The minimum
1855 carload of lumber has greatly increased, engines haul much heavier trains, roadbeds have been improved, so that the cost of hauling a single unit compared with the revenue therefrom is much less than in 1893." (Rec., 754, 761.)

(10) For that the master erred, finding XV, page 23, line 20, in failing to insert after the word "industry" the following: "and other traffic." (Rec.., 1441.)

(11) For that the master erred, finding XVI, page 23, in inserting in the last line on said page the word "Fairly."

(12) For that the master erred in inserting the word "fairly," line 3, page 24.

(13) For that the master erred in finding XVII, page 24:

"By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was established."

That finding should have been:

"By this order the rate of 50 cents per one hundred pounds, previously and for many years in effect, over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was not disturbed." (14 I. C. C., 1 et seq.)

(14) For that the master erred in the finding, line 19, page 24:

"And that such revenue is far below the average revenue per ton mile on any of the complainants' roads, and that this 50-cent rate over this system to Omaha is a very low rate."

(15) For that the master erred in the finding, line 25, page 24:

"Omaha and St. Paul are on a parity as bases of through rates, and are so considered by the commission and by rate experts." (See commission's decision in Spokane v. Northern Pacific Railway Company, decided June 7, 1910, 19 I. C. C., 162.)

(16) For that the master erred in the finding, beginning last line, page 24:

"This rate will undoubtedly result in a revenue to the
1856 northern lines measurably less than the revenue yielded to the Union Pacific line by the 50 cent rate to Omaha."

(17) For that the master erred in inserting in line 25, page 25, the following:

"While it is probable that."

(18) For that the master erred in his finding, beginning line 1, page 26:

"It is sufficient to say, that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved

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and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results reached are not widely apart from those reached by the engineers of the railroad companies." Rec., 781 et seq.

The finding is upon a matter wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

(19) For that the master erred in inserting in line 24, page 26:

"And in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures."

(20) For that the master erred in his finding, last paragraph, page 26:

"Of the method made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved."

The finding is upon a mat'er wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

(21) For that the master erred in the following finding, page 27, third paragraph:

1857 "In the conclusion at which the master has arrived, it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds."

This finding is not supported by the evidence in the record.

(22) For that the master erred in inserting the word "fair" in line 25, page 28.

(23) For that the master erred in the following finding, last line, page 28:

"Upon the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case, the results from operation of either of these companies were in any degree excessive." (Rec., 646, 647; 14 I. C. C., 7.)

(24) For that the master erred in the following finding, line 5, page 29:

"On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames (169 U. S., 522) and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions."

There is no evidence of original cost of construction, amount expended in permanent improvements, present cost of construction compared with original cost of construction, the probable earnings upon the rates complained of, or operating expenses probable during life of order.

1858 REQUESTED FINDING OF FACT.

The defendant objects and excepts to the failure of the special master herein to make each and every of the following findings of fact:

1. The rates provided for in the schedules to become effective November 1, 1907, were enjoined by the Circuit Court of the United States, having jurisdiction, and the same were never collected by the complainants herein. Shippers of lumber continued to pay the rates in effect prior to November 1, 1907, and no part of the revenues of the carriers were due to the increase in lumber rates provided for in November 1, 1907. (Complainant's brief, 3.)

2. The net returns per mile of railroad for each of complainants was much greater at the time of the hearing before the commission than they were ten years before. Freight-car capacities had greatly increased, much larger train tonnage was hauled, train crews handled much more tonnage, engine capacity had greatly increased and much more than kept pace with the increased cost of labor or of construction. (Rec., 754, 761.)

3. The 50-cent lumber rate over the Union Pacific Railroad covers as a blanket rate all points from Medford, Oregon, 350 miles south of Portland, to Cascade Locks, 45 miles east of Portland, the center of origin being 152 miles south of Portland; this rate covers as blanket rate all destination points from Brule, Nebraska, 350 miles west of Omaha, to Omaha, the center of destination being 175 miles west of Omaha. The distance from the center of origin to center of destination is 1,676 miles. The per ton mile rate for the average distance is 5.96 mills.

The 45-cent lumber rate over the Northern Pacific covers as a blanket rate all points of origin from South Bend, Wash-
1859 ington, to , 143 miles east of Tacoma, the center of origin being 16 miles east of Tacoma; this rate covers as a blanket all points of destination from Glendive, Montana, 676 miles west of St. Paul, to St. Paul, the center of destination being 338 miles west of St. Paul. The distance from center of origin to center of destination being 1,558 miles. The per ton mile rate is 5.78 mills. (Rec., 938, 1443.)

On all shipments to Chicago via Omaha upon which the rate is 55 cents, the Union Pacific receives for its haul only 45 cents. On all shipments to Chicago via St. Paul on which the 55-cent rate applied, the Hill lines received for the haul to St. Paul 45 cents.

4. Rates have been voluntarily put into effect and are now in effect from Spokane to Winnipeg over the Northern Pacific and the

Canadian Northern and the Great Northern and the Canadian Northern of 37 cents per one hundred. Via the Northern Pacific the distance is 1,545 miles. Via the Great Northern, 1,356. From Bellingham, Washington, via the Northern Pacific, to Winnipeg the distance is 2,094.3 miles, and the rate is 40 cents per one hundred pounds, out of which three cents is paid to the local road from Bellingham to Sumas Junction, 23.3 miles, leaving 37 cents to be divided between the Northern Pacific and Canadian Northern for 2,071 miles. The same condition prevails from points on the Tacoma and Eastern to Winnipeg, where out of a rate of 40 cents for a haul of 1,491 miles the Northern Pacific received as its share 36 cents. From Kendall, Washington, the rate via the Northern Pacific or Great Northern and Bellingham Bay and British Columbia Railroad the first-named carrier receives out of 40 cents, 37½ cents for a haul of 2,071 miles over the Northern Pacific, and 1,817 miles over the Great Northern. (See defendant's brief, 272.) When these rates and distances are compared with a haul of 1,564 miles to Jamestown,
North Dakota, on the Northern Pacific, and 1,896 miles to Min-
1860 neapolis over the same road, and with substantially similar
distances over the Great Northern upon which a rate of 45 cents has been prescribed by the commission, it would appear that the 45-cent rate is a very liberal rate for the carriers.

5. From a careful examination of all the evidence, I find nothing of any importance showing, or tending to show, that the complainants herein are not receiving adequate compensation for the services which they rendered the public. Any injunction against the order of the commission will operate to increase the revenue of the complainants beyond anything they have yet received upon lumber traffic. No statement is made by complainants or any of their witnesses that if an injunction is granted, thereby increasing the revenue of the carriers, there will be any reduction on any other commodities or any class of traffic. Nothing save opinion evidence is given upon the question of remuneration of the particular rates here under investigation. The commission pre-cribed 45 cents as a reasonable rate for the haul to St. Paul and Minneapolis. Measured by this standard and by the rates charged upon lumber over the lines of these complainants and of other carriers, the rates prescribed by the commission in no sense are less than the carriers are entitled to.

6. The evidence does not disclose whether the conditions and circumstances surrounding the movement of traffic from the Pacific coast to Omaha are similar or dissimilar to those appertaining to the haul from Pacific coast points to St. Paul and Minneapolis, except the elevation is much greater over the Union Pacific than over the Great Northern and Northern Pacific. (Rec., 1023.)

7. The record fails to disclose the amount of the tonnage subject to the commission's order which is hauled by complainants. It does appear that during the year ending June 30, 1907, of the whole
amount of tonnage hauled by the complainants, products of
1861 the forest constituted on the Union Pacific 7.86 per cent, on the Northern Pacific 37.38 per cent, on the Great Northern

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14.8 per cent. How much of this percentage is carried at rates prescribed by the commission does not appear. These percentages cover both State and interstate east-bound and west-bound movement. The commission's order applies only to interstate east bound. (14 I. C. C., 16.)

8. Lumber is a low-grade commodity, is loaded and unloaded by the shipper, requires but little service, loads far beyond the average per car, and upon the whole is very desirable traffic. I find no evidence which shows or tends to show other than mere opinions of interested parties that lumber subject to the orders herein does not pay its fair proportion of the income which the complainants have or should have.

CONCLUSIONS OF LAW.

Defendant objects and excepts to the following conclusions of law made by the special master herein:

(1) For that the master erred in the 9th conclusion, page 31, wherein he stated the law as follows:

"An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted."

(2) For that the master erred in overruling each and every objection entered by defendant to the admission of evidence as shown on pages 39, 40, and 41 of volume 1 of the printed record herein.

(3) For that the master erred in holding, line 18, page 42:

"That the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy."

1862 (4) For that the master erred in holding, line 18, page 45:

"It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations, a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws."

(5) For that the master erred in holding, line 1, page 47, that there does inhere in the Federal courts of equity power to review rates made by the commission to determine "whether or not the delegated power has been exercised in a just and r'asonable manner."

(6) For that the master erred in reaching the following conc'usions, paragraph 3, page 49:

"It does, however, appear that they are very low rates and unusually favorable to the shippers and to the public."

(7) For that the master erred in reaching the following conclusion, paragraph 4, page 49:

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"In restoring the superseded rates to the Pembina–Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point."

(8) For that the master erred in reaching the following conclusion, paragraph 5, page 49:

"If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates."

(9) For that the master erred in reaching the following conclusion, paragraph 6, page 49:

"The difficulties and expenses of transportation over the Union Pacific line and the Northern lines are fairly equal. The route over the Northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates."

1863 (10) For that the master erred in reaching the following conclusion, paragraph 7, pags 49:

"The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable."

(11) For that the master erred in reaching the following conclusion, paragraph 8, page 49:

"If then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities."

(12) For that the master erred in reaching the following conclusion, line 7, page 50:

"It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbi-

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tarary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised."

(13) For that the master erred in reaching the following conclusion, line 22, page 50:

"These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5 cents per one hundred pounds differential to Chicago while the northern lines are allowed 10 cents. And the 10-cent rate from St. Paul to Chicago is and always must be an exceeding low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order."

(14) For that the master erred in the following conclusion, line 16, page 52:

"Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low."

(15) For that the master erred in reaching the following conclusion, line 6, page 53:

"From what has been said above, it cannot be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases."

(16) For that the master erred in reaching the following conclusion, beginning last line, page 53:

"As already seen, the defendant is without power to establish rates upon any other basis and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved, the preexisting scale of rates to this line was, in the opinion of the defendant, just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative and we are therefore furnished in these cases, by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina–Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Com-

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merce Commission v. Illinois Central Railroad Company et al., supra, is not presented? Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant?"

(17) For that the master erred in reaching the following conclusion, beginning line 27, page 54:

"This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a great distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable."

(18) For that the master erred in reaching the following conclusion, beginning first line, page 55:

"In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distances may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from Astoria to
1866 St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines."

(19) For that the master erred in reaching the following conclusion, beginning 20th line, page 55:

"It is not, therefore, unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded."

(20) For that the master erred in reaching the following conclusion, line 23, page 55:

"It will be recalled that prior to the reduction in 1893, by the Great Northern, the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific Northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive

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and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between Omaha and St. Paul, on the one hand, and the coast territory, on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha, on the one hand, and points in the coast territory, as well as the Spokane territory, on the other, should nominally be upon an equal basis.

Thus the commission said in the case above cited:

"There is no condition of construction or operation or financial result which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

1867 (21) For that the master erred in reaching the following conclusion, line 21, page 56:

"While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the east-bound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration."

(22) For that the master erred in reaching the following conclusion, line 29, page 56:

"The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike."

(23) For that the master erred in reaching the following conclusion, line 22, page 57:

"As its reasons for permitting an advance east of the Pembina–Port Arthur line, the defendant said in the so-called Washington case (No. 1329):

"'To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton-mile accruing to the carriers from this traffic.'"

(24) For that the master erred in reaching the following conclusion, line 29, page 57:

"The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred

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pounds was the longer haul involved to points east of the Pembina–Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina–Port Arthur line and, as already shown, traffic to these points from the coast territories probably involves, on the average, substantially longer hauls than to Omaha; certainly traffic to the northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which,
1868 under the commission's orders, take the 45-cent rate is generally greater than the average distance between points where under the commission's orders the 50-cent rate applies."

(25) For that the master erred in reaching the following conclusion, line 11, page 58:

"The revenue per ton-mile, however, accruing to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton-mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton-mile on traffic from Portland to St. Paul, as shown by the record, was 3.90 mills, and under the 50-cent rate contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton-mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton-mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seems to clearly demonstrate that the revenue per ton-mile earned by the carriers transporting this traffic to St. Paul and common points, even under the 50-cent rate, would be substantially less than the revenue per ton-mile accruing to carriers in the traffic to Omaha, and therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina–Port Arthur line seem to it to be of sufficient weight to authorize their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable."

(26) For that the master erred in reaching the following conclusion, line 4, page 59:

"Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court, upon the whole record before it, to determine whether the 50-cent rate in and of itself is in any wise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate."

1869 (27) For that the master erred in reaching the following conclusion, line 12, page 59:

"The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience

in railroad traffic affairs, and these witnesses, expressing their opinion and adding reasons therefor, were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered, in addition, numerous exhibits comparing the pre-existing rates, as well as the proposed rates and earnings therefrom, with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber, based both upon earnings per ton-mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results, while instructive as showing approximate or average results, are not sufficiently close to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars west bound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded."

(28) For that the master erred in reaching the following conclusion, line 12, page 60:

"A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by the complain-
1870 ants. The effect which, under the authorities, must be given to the conclusions of the defendant has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify, in the opinion of the master, an injunction against the rates approved by the commission to points on and west of the Pembina–Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master, upon the entire record, that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina–Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders, in so far as they displace the rates contained in the tariffs of Novem-

ber 1, 1907, to points east of the Pembina–Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the preexisting rate, should be set aside and enjoined."

(29) For that the master erred in reaching the following conclusion, line 6, page 61:

"By the effect of the orders of the defendant finding the rates to points east of the Pembina–Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the Coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents fixed in said tariffs to St. Paul a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

1871 (30) For that the master erred in reaching the following conclusion, line 12, page 62:

"The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton-mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points can not be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. This 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all

or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents, whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the records to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha, would be unjust or unreasonable for the
1872 transportati'n of this traffic from Omaha to Chicago. Considering all the facts relating to the character of the 10-cent rate above referred to, in its application between St. Paul and Chicago, for the distance involved and under the conditions disposed in the record, it can not be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha, the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can be sustained, and for the various reasons hereinbefore referred to it is plain that this rate, whether applied via St. Paul or via Omaha, neither was, nor is, unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago."

(31) For that the master erred in reaching the following conclusion, line 6, page 64:

"There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions, generally, affecting rates to all such destinations; in fact in the orders of the defendants permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina-Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair, and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina-Port Arthur line other than as above indicated."

(32) For that the master erred in reaching the following conclusion, line 19, page 64:

"In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants and effective November 1, 1907, to points east of the so-called Pembina-Port Arthur line, to be un-

just and unreasonable can not be approved; that the orders
1873 of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons can not be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points east of the so-called Pembina-Port Arthur line, to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof, be set aside and annulled."

(33) For that the master erred in reaching the following conclusion, line 4, page 65:

"By the order in the so-called Potlatch case (No. 1348), which is one of the orders sought to be enjoined in these proceedings, the defendants fixed rates from points in eastern Washington, eastern Oregon and Montana, to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907."

(34) For that the master erred in reaching the following conclusion, line 2, page 66:

"From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of the Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended."

1874 (35) Defendant objects and excepts to the proposed decree of injunction for that the same is a modification of the commission's order, while the statute does not confer upon the court power to act other than upon the order as a whole by enjoining, suspending, or sustaining the same in toto.

(36) For that the master erred in recommending entries of decrees of injunction in each of the said cases in the form used in said report.

(37) For that the master erred in failing to recommend decrees dismissing the bills of complainant in each of the said causes.

Wherefore, defendant by its solicitors respectfully prays that in all of which particulars herein set out the report be varied and altered so as to conform to the facts and the law applicable thereto.

LUTHER M. WALTER,
CHARLES C. HOUPT,
Solicitors for Defendant.

J. N. TEAL,
W. A. WIMBISH,
Of Counsel.

(Endorsed:) Filed August 27th, 1910. Henry D. Lang, clerk.

1875 EXHIBIT B.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 883.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 884.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 885.

Complainants' exceptions to master's report.

Come now the complainants and make the following exceptions to the report of the master dated July 22, 1910:

I.

They except to that finding and conclusion of the master, appearing on page 13 of the report as printed, reading as follows:

"It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements, and in addition thereto have accumulated large surplus funds."

And to that finding and conclusion of the master, appear-
1876 ing on pages 23 and 24 of the printed report, reading as follows:

"During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surpluses, and clearly appear to have been on the whole prosperous and to have earned fairly satisfactory net incomes from their transportation."

upon the ground that it appears from the testimony that the earnings of the Northern Pacific Railway Company and of the Great Northern Railway Company during the periods referred to in said findings have not yielded a fair return upon the fair value of the property of said companies devoted to railroad uses. The evidence further shows that the properties of the Northern Pacific Company were in an insolvent condition and in the hands of receivers during a portion of the time down to the year 1896, and that the properties of the Union Pacific system were likewise insolvent and in receivers' hands during a portion of the time down to the year 1898.

The evidence showing the cost of reproduction of the Great Northern Railroad system contained in complainants' Exhibit 15, Hogeland, page 435, printed transcript of record, the evidence showing the value of the Great Northern system computed upon average market price of stocks and bonds for the period of five years ended June 30, 1908, introduced in evidence under stipulation and printed in complainants' reply brief, page 51, and complainants' Exhibit A, Great Northern, at pages 653 to 664, inclusive, of printed transcript of record, showing gross earnings, operating expenses, taxes, net earnings and net income from operation, show that the net earnings upon the fair value of the properties of that company for the years 1904 to 1908, both inclusive, to have been less than a fair return upon the value of such properties.

1877 The findings of the cost of reproduction of the Northern Pacific Railway Company, appearing in complainants' Exhibit 4, pages 116 to 135 of record, and the findings of the value of the property computed upon the basis of the average market value of bonds and stocks of said company for a period of five years, introduced in evidence by stipulation and printed on page 52 of complainants' reply brief, and the findings as to the earnings of said property during the entire period from its reorganization in 1896 down to and including the fiscal year 1909, appearing in complainants' Exhibit 22, page 595 of printed transcript of record, showing that the earnings from said property during the said period had not yielded a fair return upon the fair value thereof.

II.

They except to that finding and conclusion of the master, appearing on page 14 of the printed copy of the report, reading as follows:

"The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them we think this evidence so remote and speculative as to be absolutely immaterial in this case."

And further except to paragraphs 5 and 6 of the conclusions of law upon page 30 of the printed copy of the report reading as follows:

"(5) But where the question under consideration is the just-
1878 ness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate."

for the reason that the master erred as a matter of law in holding that the evidence of the cost of reproduction of the Northern Pacific and Great Northern systems is so remote and speculative as bearing upon the particular rate as to be immaterial. The master erred in holding that upon the evidence thus introduced a finding based thereon would be merely a guess. The master erred in holding that the cost of reproduction of said properties was so remote and speculative as to be immaterial in determining the ultimate fact of the real value of said properties.

III.

They except to that finding and conclusion of the master, appearing on page 21 of the printed copy of the report, reading as follows:

"Ever since 1903 the condition in respect to the predominance of empty-car mileage has been changing until in 1907 the west-bound empty-car movement greatly predominated over the east-bound empty-car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the west to the consuming markets of the east."

for the reason that, as shown in Great Northern Exhibit 27, page 613, and Maguire Exhibit 3, page 1485, and in Northern Pacific Exhibit 25, at page 604, all in the printed transcript of record, it ap-
1879 pears that almost the entire volume of east-bound tonnage consisted of lumber and shingles during the year 1907.

IV.

They except to those findings and conclusions of the master, appearing on page 30 of the printed copy of the report, reading as follows:

"(2) The Constitution guarantees just compensation for private property devoted to a public use, and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation cannot be predicated upon it."

and to those findings and conclusions of the master, appearing on pages 42 and 43 of the printed copy of the report, reading as follows:

"In other words, confiscation cannot be predicated upon a single rate in and of itself, particularly because it is impossible to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns."

And to that finding and conclusion of the master, appearing on page 44 of the printed copy of the report, reading as follows:

"It seems clear, therefore, that in cases involving a single rate,
1880 such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out."

upon the ground that the master erred as a matter of law in finding and holding that a carrier is only entitled under the Constitution and the act to regulate commerce to just compensation for the entire use of all its property, and that a particular rate need not in and of itself furnish just compensation for the particular service rendered; and further erred as a matter of law in holding that confiscation under the provisions of the Constitution cannot be predicated upon a single

rate unless the reduction in that rate so affects the general body of net returns as to reduce the net returns as a whole below what is just and reasonable, for the reason that under the provisions of the Constitution and the limitations of power upon the Interstate Commerce Commission, as contained in the act to regulate commerce, the commission is without power to establish any rate or rates for transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all the circumstances relating to that service is just and reasonable.

V.

They except to that finding and conclusion, appearing on page 44 of the printed copy of the report, reading as follows:

"The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that, in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost."

1881 And to that finding and conclusion, appearing on page 49 of the printed copy of the report, reading as follows:

"There is not evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations."

for the reason that complainants have not conceded that the rates on lumber fixed by the orders of the commission involved herein were not confiscatory, and for the further reason that there is ample evidence in the record from which it clearly and persuasively appears that the rates fixed by the orders of the commission in controversy here are confiscatory. The evidence of the witness James J. Hill, at pages 1267, 1276, 1278, 1280, 1288, 1294, and 1298 in the printed transcript of the record; the evidence of the witness Howard Elliott, at pages 1372 to 1374, inclusive, therein; the evidence of the witness J. G. Woodworth, at pages 3883 to 3891, inclusive, therein; the evidence of the witness James A. Munroe, at page 306 and at pages 352, 364, 365; the evidence of the witness J. G. Woodworth, at page 1475; the evidence of Dwight C. Morgan, at pages 800, 863; Woodworth Exhibit 1, page 1443; Woodworth Exhibit 2, page 1447; Maguire Exhibit 3, page 1485; R. B. Miller Exhibit 2, page 1500; Miller's statement, page 1512; Union Pacific statement, page 353; evidence of the witness R. I. Farrington, page 1602 and following, and evidence of witness James J. Hill, page 1280, clearly shows that the rates fixed by the orders of the commission complained of herein are confiscatory.

VI.

The complainants further except to the finding and conclusion of the master denying the prayer for an injunction against the orders

of the commission disapproving the rates filed by the carriers in their tariffs of November 1, 1907, to points on and west of the so-
1882 called Pembina–Port Arthur line and in lieu thereof requiring the restoration of the rates previously in effect to points on and west of said line, for the reason in exception Number V that the evidence conclusively shows that the rates established by the carriers in the tariffs of November 1, 1907, to points on and west of said Pembina–Port Arthur line were neither unjust nor unreasonable, and conclusively shows that the rates ordered restored by the orders herein complained of were and are unjust, unreasonable, and confiscatory.

The complainants therefore pray that the report in the matters hereinbefore excepted to be modified and made to conform to the law and the proof contained in the record.

HALE HOLDEN,
F. C. DILLARD,
H. A. SCANDRETT, and
CHARLES DONNELLY,
Solicitors for Complainants.

(Endorsed:) Filed August 27, 1910. Henry D. Lang, clerk.
(Endorsed:) Report of rulings upon exceptions of complainants and defendant. Filed August 27th, 1910. Henry D. Lang, clerk.

1883 Thereafter and on the same day the following order noting the filing of the master's report was entered in said cause, to wit:

1884 United States Circuit Court, District of Minnesota, Third Division.

Chancery rule and order book.

UNION PACIFIC RAILROAD CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} No. 883. Equity.

1910. Aug. 27th.

And now comes Frederick N. Dickson, the duly appointed special master in chancery in the above-entitled cause, and filed his report in the clerk's office of said court under an order appointing him special master in chancery, which said filing is hereby entered and noted.

(Entered C. R. "C," page 208.)

And thereafter, on September 15th, 1910, the following record of hearing upon the exceptions to master's report was entered of record in said cause, to wit:

1885 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes: June term, A. D. 1910. September 15, 1910.

Thursday morning: Court opened pursuant to adjournment. Present: Hon. Walter H. Sanborn, Hon. Willis Van Devanter, Hon. William C. Hook, circuit judges; Henry D. Lang, clerk.

UNION PACIFIC RY. CO.; OREGON SHORT LINE R. R. CO.; Oregon R. R. & Navigation Co.; Southern Pacific Co.; Northern Pacific Ry. Co.; Great Northern Ry. Co.; Chicago, Burlington & Quincy R. R. Co.; and Oregon & California R. R. Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 883. Equity.
NORTHERN PACIFIC RY. CO.; GREAT NORTHERN Ry. Co.; Chicago, Burlington & Quincy R. R. Co.; Union Pacific R. R. Co.; Oregon Short Line R. R. Co.; and Oregon R. R. & Navigation Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 884. Equity.
GREAT NORTHERN RY. CO.; NORTHERN PACIFIC Ry. Co.; Chicago, Burlington & Quincy R. R. Co.; Union Pacific R. R. Co.; Oregon Short Line R. R. Co.; Oregon R. R. & Navigation Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

This day come the parties to these causes by their respective solicitors, Mr. Hale Holden appearing on behalf of the complainants and Messrs. Luther M. Walter, J. N. Teal, and W. A. Wimbish appearing on behalf of the defendant, and the said cause having been heretofore, by order duly made and entered, set down for hearing at this time and place, upon the exceptions of the complain-

ants and defendant to the special master in chancery's report
1886 herein, the same now coming on.

Mr. Hale Holden opens and argues the said exceptions on behalf of the complainants.

Mr. Luther M. Walter opens, stated, and argues the exceptions on behalf of the defendant.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. Luther M. Walter resumes and concludes his argument upon said exceptions on behalf of the defendant.

Mr. W. A. Wimbish argues upon the said exceptions on behalf of the defendant.

Mr. J. N. Teal argues in conclusion upon said exceptions on behalf of the defendant.

Mr. Hale Holden argues in reply and conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties hereto upon said exceptions to the special master's report the same are duly submitted to and by the court taken under advisement.

Ordered, That this court do now adjourn until to-morrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

Thereafter, and on October 1st, 1910, the following exceptions of defendant to master's final report was filed in said cause, to wit:

1887 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY; OREGON SHORT LINE Railroad Company; Oregon Railroad & Navigation Company; Southern Pacific Railway Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN Railway Company; Chicago, Burlington & Quincy Railroad Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 884.

GREAT NORTHERN RAILWAY COMPANY; NORTHERN PACIFIC Railway Company; Chicago, Burlington & Quincy Railroad Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

Exceptions of defendant to master's final report.

Charles C. Houpt, United States attorney; Luther M. Walter, special assistant United States attorney; J. N. Teal, W. A. Wimbish, of counsel.

Now comes defendant Interstate Commerce Commission, by its solicitors, and excepts to the final report of the special master filed herein on the 27th day of August, 1910, upon each and every ground set out in the objections and exceptions of this defendant filed with the master on the 17th day of August, 1910, set out in Exhibit
1888 A accompanying the printed report of the master at pages 73 and 96, both inclusive.

In further support of said exceptions so presented to and filed with the master, this defendant respectfully submits the following:

(a) Referring to exception No. 3 (pp. 74, 75 of the master's report), the master should have found and declared that the 40-cent rate to St. Paul was established by the Great Northern Railway Company, upon its completion to the coast in 1893, for the purpose of securing traffic and because it was believed and declared by the officials of the said railway company that this rate was reasonable and just and would afford the carrier fair remuneration for the services rendered; and the fact that there was or probably would be an empty east-bound movement of cars was not considered or offered as a reason for making the rate. (Trans., pp. 1274–75.)

The master should have further found that the Northern Pacific Railway Company joined in this rate because it was forced to do so by competition, and not because of the existence of an east-bound empty-car movement.

(b) Referring to exception No. 14 (p. 77 of the master's report), the master should have found and declared that while the rate per ton-mile for the haul of lumber from coast points to Omaha, under the 50-cent rate, was less than the average rate per ton-mile on all traffic of the complainant roads, it afforded full compensation for the service performed, and was not out of line with the rates upon other traffic, in view of the length of haul, the volume of the movement, and the character of the commodity.

(c) Referring to exception 15 (p. 77 of the master's report), the master should have found and declared that Omaha and St. Paul are not on a parity as bases for the rates for the haul of lumber from
1889 Pacific coast points; that many years ago the carriers estab-

lished a differential of 20 cents a hundred pounds as between Omaha and St. Paul because of the greater market competition at St. Paul, which was then the center of a large lumber-producing region; that as this competition relaxed the differential was decreased, until, under the tariffs of November 1, 1907, it was made 5 cents a hundred pounds; that the Interstate Commerce Commission, in its report and order, did not disturb but recognized and retained this differential in the rates prescribed; and that the difference in market competition existing at St. Paul justified the carriers in fixing the differential of 5 cents under Omaha.

The defendant prays that the said exceptions be sustained by the court; that the findings and conclusions of the master excepted to be reversed; and that the original and amended bills of the complainants in said causes be dismissed.

CHARLES C. HOUPT,
United States Attorney.
JOEL M. DICKEY,
Assistant United States Attorney.

(Endorsed:) Defendant's exceptions to master's report. Filed October 1st, 1910. Henry D. Lang, clerk.

And thereafter on the same day the following order fixing compensation of the master was filed in said cause, to wit:

1890 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railroad Company, Great Northern Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885.

1891 By order of this court made one in each of the above-entitled causes, on the 13th day of February, 1909, Frederick N. Dickson, of St. Paul, Minnesota, was appointed special master in chancery, in each of said causes, and empowered and directed to take and report to the court the evidence therein; to examine the same; to make all necessary computations; to find and state the facts in said causes; and to report advisory conclusions of law and recommend a proper form of decree herein.

And the said master having heard said causes, the same having been tried before him together, and having on the 22nd day of July, 1910, served upon the respective parties to said causes a preliminary report of his conclusions and recommendations therein, and having on the 19th day of August, 1910, heard and considered the exceptions of the respective parties to said causes to said report and recommendations, and having thereafter, on the 27th day of August, 1910, filed his final report of said causes and recommendations therein.

Now, upon consideration, it is ordered, That the compensation of said special master for his services in said three causes (including $200.00 expense sustained by him) be, and it is hereby, fixed and allowed at the sum of four thousand ($4,000.00) dollars, to be distributed pro rata between said causes.

Dated this 28th day of September, 1910.

WALTER H. SANBORN,
Circuit Judge.

Filed October 1st, 1910. Henry D. Lang, clerk.

1892 Thereafter and on October 10th the following decision overruling exceptions to master's report was filed and entered in said cause, to wit:

1893 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington & Quincy Railroad Co., and Oregon and California Railroad Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883. Equity.

NORTHERN PACIFIC RAILWAY CO., GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., and Oregon Railroad and Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.	Equity.
GREAT NORTHERN RAILWAY CO., NORTHERN PACIFIC Railway Co., Chicago, Burlington & Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., and Southern Pacific Co., Complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.	Equity.

All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty-cent rate on lumber to St. Paul and other points east of the Pembina line was arbitrary, so palpably unjust and unreasonable, and so discriminatory that it was beyond the power of the commission are overruled on the ground that this action of the commission was beyond its power or so palpably and gravely unjust and unreasonable as to be beyond the substance, if not beyond the form, of its power and upon the authority of

Interstate Commerce Com. vs. Ill. Cent. R. R. Co. (30 Sup. Ct. Rep., 155); C., M. & St. P. Ry. Co. vs. Minnesota (134 U. S., 1894 418–452–456–457); Mo., Kansas Texas R. R. Co. et al. vs. I. C. C. (164 Fed., 645); F. H. Peavey & Co. vs. U. P. Ry. Co. (176 Fed., 409–418–422).

Let orders, therefore, be entered overruling the exceptions to the special master's report and let the proposed decrees be entered.

(Endorsed:) Decision overruling exceptions and direction decrees to be entered. Filed Oct. 10, 1910. Henry D. Lang, clerk.

And thereafter on the same day the following order overruling exceptions to master's report and directing decrees to be entered was filed and entered of record in said cause, to wit:

1895 United States Circuit Court for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, *vs.* INTERSTATE COMMERCE COMMISSION.	Equity. No. 883.

Whereas an order was duly entered herein on the 30th day of July, A. D. 1910, setting the exceptions of the complainants and defendant to the report of the special master in chancery, and the form of decree recommended and proposed by him, which said report and proposed decree were duly filed herein on the 27th day of August, A. D. 1910, down for hearing on the 15th day of September, A. D. 1910, and the same having been on that day duly heard, argued, and submitted to and by the court taken under advisement.

Now, after due consideration thereof, it is by the court ordered, adjudged, and decreed, That all of the exceptions of the complainants and defendant and of each of them be, and they hereby are, overruled. And it is further ordered, That the report of the special master in chancery as filed herein be, and the same hereby is, in all things approved and confirmed, and that the decree recommended by the said special master be, and the same hereby is, approved and accordingly that the same be entered.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
U. S. Circuit Judges.

(Endorsed:) Filed October 1st, 1910. Henry D. Lang, clerk.

1896 Thereafter and on the 13th day of October the following decree was filed and entered of record in said cause, to wit:

1897 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY; OREGON SHORT LINE Railroad Company; Oregon Railroad & Navigation Company; Southern Pacific Railway Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.

This cause came on to be heard at this term and was argued by counsel; thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in the proceeding brought before it entitled Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al., being I. C. C. No. 1324, dated June 3, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in the proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 28, 1908, and as further amended September 1, 1908; and the order of the defendant in the proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in the proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific
1898 Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, in so far as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota, Moorhead and Breckenridge, Minnesota, Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Missouri, and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
United States Circuit Judges.

(Endorsed:) Filed October 15th, 1910. Henry D. Lang, clerk.

Thereafter and on October 17th, 1910, the following stipulation for taxation of costs was filed in said cause, to wit:

1899 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION. } No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885.

Stipulation.

It is stipulated that the following items of disbursements made by the complainants in the above entitled causes were disbursements necessarily made therein and that they may be taxed as costs in favor of said complainants, the amounts named below to be apportioned pro rata between said causes, or, in other words, one-third to each cause:

1900	1908.	
	Dec. 17. Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for serving chancery subpœna	3.00
	1909.	
	Nov. 6. Paid Robt. S. Taylor, Saint Paul, for record of testimony and proceedings	1,413.00
	Jan. 18. Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for additional deposit	10.00
	1910.	
	April 15. Paid Gunthrop-Warren Printing Company, for printing record	2,948.00
	Mar. 1. Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for additional deposit	30.00
	Aug. 6. Paid Review Publishing Company, Saint Paul, for printing master's report	50.25

Sept. 3.	Paid Gunthrop-Warren Printing Company for reprint of master's report, with exceptions and rulings thereon	94.50
Oct. 7.	Paid Frederick N. Dickson, special master, compensation for his services, as per agreement of parties and order of court	4,000.00
	Total	$8,548.75
	To fees of H. Lee, crier, Chicago, 8 days at $2.50 per day, as per stipulation filed Mar. 11, 1910	20.00
		8,568.76

F. C. DILLARD,
HALE HOLDEN,
CHAS. DONNELLY,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

To amount brought forward	$8,568.75
Deduct therefrom deposits for costs	40.00
	8,528.75
One-third thereof under the stipulation apportioned to this case	2,842.92
To clerk's fees in this cause	21.00
To making chancery final record	101.55
	$2,965.47

Costs taxed at $2,965.47, this 17th day of October, A. D. 1910.
HENRY D. LANG, *Clerk.*

(Endorsed:) Stipulation for taxation of costs. Filed October 17th, 1910. Henry D. Lang, clerk.

1901 Thereafter and on the same day the following judgment for costs was entered of record in said cause, to wit:

1902 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes: June term, A. D. 1910. October 17th, 1910.

Monday morning: Court opened pursuant to adjournment.
Present: Hon. Walter H. Sanborn, circuit judge; Hon. Charles A. Willard, judge; Henry D. Lang, clerk.

UNION PACIFIC RAILROAD COMPANY; OREGON Short Line Railroad Co.; Oregon Railroad & Navigation Co.; Southern Pacific Company; Northern Pacific Railway Co.; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; and Oregon and California Railroad Company. *vs.* INTERSTATE COMMERCE COMMISSION.	No. 883. Equity.

In accordance with the final decree entered herein on the 13th day of October, 1910, and the stipulation of the solicitors for the respective parties hereto this day filed herein, it is by the court ordered, adjudged, and decreed that Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company do have and recover of and from the Interstate Commerce Commission, the defendant herein, their costs and disbursements in this action this day taxed and allowed at the sum of two thousand nine hundred sixty-five dollars and forty-seven cents ($2,965.47), and that they have execution therefor.

A true record,

Attest: HENRY D. LANG, *Clerk*.

1903 That thereafter and on the same day the following appeals papers were filed and entered of record in said cause, to wit:

Assignment of errors and prayer for reversal.
Petition for appeal.
Order allowing appeal.
Citation and proof of service thereof.
Præcipe for return to U. S. Supreme Court, and
Stipulation as to record upon appeal.

1904 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILROAD COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.

Assignment of errors.

Now comes the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the United States attorney, and charges that in the order and decree rendered by said Circuit Court for said district in the above entitled cause on the tenth day of October, 1910, wherein and whereby said court suspended the order of the Interstate Commerce Commission, as therein shown, and restrained and enjoined the enforcement of the same, and in the record and proceedings therein, there is manifest error, to its injury, in this, to wit:

1. Said Circuit Court erred in not dismissing the bill and amended bill of complaint for want of equity.

2. Said Circuit Court erred in not dismissing complainants' bill and amended bill for want of jurisdiction.

3. Said Circuit Court erred in holding that the said order of the commission was erroneous and unlawful and beyond the power of the commission to make.

4. Said Circuit Court erred in ordering that said order of the commission be suspended, set aside, and held for naught and its attorneys, agents, and employees be restrained and enjoined from enforcing the same.

5. Said Circuit Court erred in suspending, annulling, and holding void said orders of the said commission.

Wherefore the Interstate Commerce Commission prays that the decree of said Circuit Court rendered on the tenth day of October,
1905 1910, be reversed, and that said Circuit Court *day of October, 1910, be reversed, and that said Circuit Court* be ordered to enter a decree dismissing the amended petition or bill of complaint in the above entitled cause by said complaint against said Interstate Commerce Commission.

CHAS. C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant to the United States Attorney.

(Endorsed:) Assignments of error and prayer for reversal. Filed October 17, 1910. Henry D. Lang, clerk.

1906 In the Circuit Court of United States for the District of Minnesota.

UNION PACIFIC RAILROAD COMPANY ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883.

Petition for appeal.

The Interstate Commerce Commission, by Honorable Charles C. Houpt, United States attorney for the District of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, being thereunto duly authorized, represents that in the decree or order of said circuit court in the above stated case, rendered on the tenth day of October, 1910, there is manifest error to its injury, and, therefore, prays for an order granting appeal from said decree to the Supreme Court of the United States.

CHAS. C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Asst. to the United States Attorney.

(Endorsed:) Petition for appeal. Filed October 17, 1910. Henry D. Lang, clerk.

1907 In the Circuit Court of the United States for the District of Minnesota.

UNION PACIFIC RAILWAY COMPANY ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 883.

Order allowing appeal.

In this cause the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the District of Minnesota, and Luthur M. Walter, special assistant to the said United States attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the tenth day of October, 1910, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of $3,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 11th day of November, 1910.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order allowing appeal. Filed October 17, 1910. Henry D. Lang, clerk.

1908 UNITED STATES OF AMERICA.

Circuit Court, Eighth Circuit.

Citation.

United States of America to Union Pacific Railroad Company et al., greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the Capitol, in the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. Circuit Court for the District of Minnesota, Third Division, wherein the Interstate Commerce Commission is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said petition mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said court, this 17th day of October, A. D. 1910.

WALTER H. SANBORN,
Judge of Said Court.

Due service of the foregoing citation by copy at St. Paul, Minnesota, is hereby admitted this 17th day of October A. D. 1910.

F. C. DILLARD,
HALE HOLDEN,
CHARLES DONNELLY,
Solicitors for Appellees.

(Indorsed:) Entered 883 eq. No. 883 eq. United States Circuit Court, District of Minnesota, 3d Division. Union Pacific Railroad Co. et al., vs. the Interstate Commerce Commission, defendant. Citation filed Oct. 17, 1910. Henry D. Lang, clerk.

1909 Circuit Court of the United States, District of Minnesota, Third Division.

UNION PACIFIC RAILWAY COMPANY ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSON, DEFNDANT. } No. 883.

To the clerk of the above named court:

Please make a return upon the appeal to the United States Supreme Court and include therein all the files and records in this cause.

Dated St. Paul, Minnesota.

CHAS. C. HOUPT, *U. S. Atty.*,
LUTHER M. WALTER, *Atty.*,
Complainants' Solicitors.

(Endorsed:) Præcipe for return. Filed October 17, 1910. Henry D. Lang, clerk.

1910 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants,
vs.
THE INTERSTATE COMMERCE COMMISSION, DEfendant. } No. 884. Equity.

GREAT NORTHERN RAILWAY COMPANY, COMplainant,
vs.
THE INTERSTATE COMMERCE COMMISSION, DEfendant. } No. 885. Equity.

It is stipulated and agreed by and between the parties hereto that the clerk of this court in preparing the records for transmission to the Supreme Court of the United States shall not include the record in each of these two cases, it being in each case a duplicate of that

being sent forward in the case of the Union Pacific Railway Company et al. versus The Interstate Commerce Commission, No. 883. The Supreme Court in passing upon the appeal in each of the said cases may use the record in number 883 as the record in all three of said cases.

F. C. DILLARD,
Solicitor for Complainant.
HALE HOLDEN,
Solicitor for Complainant.
CHARLES DONNELLY,
Solicitor for Complainant.
CHARLES C. HOUPT,
Solicitor for Defendant.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation as to record upon appeal. Filed October 17, 1910. Henry D. Lang, clerk.

1911 UNITED STATES OF AMERICA.

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 1,911 pages, numbered consecutively from 1 to 1911, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause except the original bill of complaint, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 28th day of October, A. D. 1910.

[SEAL.]

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

(Indorsement on cover:) File No. 22423. Minnesota, C. C. U. S. Term No. 451. The Interstate Commerce Commission, appellant, vs. Union Pacific Railroad Company et al. Filed November 30th, 1910. File No. 22423.

○

IN THE

Circuit Court of the United States.

FOR THE DISTRICT OF MINNESOTA,

THIRD DIVISION.

UNION PACIFIC RAILROAD CO., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., and Oregon and California Railroad Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity.

No. 883.

NORTHERN PACIFIC RAILWAY CO., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., and Oregon Railroad and Navigation Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity.

No. 884.

GREAT NORTHERN RAILWAY CO., Northern Pacific Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., and Southern Pacific Co., Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity.

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HON. FREDERICK N. DICKSON, Master.

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IN THE

Circuit Court of the United States.

FOR THE DISTRICT OF MINNESOTA,
THIRD DIVISION.

UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and Oregon and California Railroad Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 884.
GREAT NORTHERN RAILWAY COMPANY, Northern Pacific Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 885.

TRANSCRIPT OF RECORD.

These causes came on to be heard before the Special Master.

Hon. Frederick N. Dickson, in Room 326, Federal Building, St. Paul, Minnesota, on Tuesday, April 13, 1909, at 10 o'clock.

The following proceedings were thereupon had:

The Master: Gentlemen, will you kindly announce the various appearances for the reporter so he can get a record of them.

Mr. Holden: My name is Hale Holden. I appear, with Mr. Charles Donnelly, for the Northern Pacific, the Great Northern, and the Chicago, Burlington & Quincy lines, in each of the three cases Mr. F. C. Dillard appears for the Union Pacific, Oregon Short Line, Oregon Railroad & Navigation Company, Southern Pacific Company, and also the Oregon & California Railroad Company, which is a complainant in one, if not all, of the cases.

Mr. Teal: For the defendant, please enter the appearance of Mr. Charles C. Houpt, United States Attorney, Mr. Luther M. Walter, Mr. W. A. Wimbish, and Mr. J. N. Teal.

Mr. Holden: Because of reasons affecting the counsel on both sides, we came to an agreement some days ago that there should be a stipulation entered into for an extension of the time for taking complainants' testimony, and also if desired, for the taking of testimony on behalf of the defendant, and in pursuance of the stipulation an order will be asked of the court carrying it out. We will arrange that among ourselves as to the length of time necessary. I think it will be but a very short time. These three cases, I take it, will be heard together, as they involve substantially the same issues and the same subject-matters in each case.

MR. HOLDEN'S OPENING STATEMENT.

It seems to me that perhaps it would be of some help to the Master if a brief statement of the nature of these cases and the circumstances which have led up to this point in the litigation, were made.

I have a map here, which I cannot find a place to hang, but if it will assist your Honor I will lay it on the desk, and perhaps as I speak it may guide you a little.

As of course your Honor knows, the chief lines involved in this controversy are the Union Pacific lines, the Northern Pacific lines, and the Great Northern lines. Each of those three systems reaches from the Pacific Coast in the Northwest to various destinations in the Middle West, the Union Pacific line terminating at the Missouri River (at Omaha and Kansas City), the Great Northern and the Northern Pacific terminating at Minneapolis and St. Paul and Duluth, at the head of the Lakes.

The only position the Chicago, Burlington & Quincy Railroad occupies in this litigation is by virtue of the fact that at Billings, Montana, it connects with the Northern Pacific; and since this proceeding was begun and heard by the Commission, a connection has been made north of Billings with the Great Northern Road, and by that connection the gateway is open to what is called Missouri River territory, the Burlington leading to Omaha and Kansas City and various other points on the Missouri River. The Burlington also connects at St. Paul and Minneapolis with the Great Northern and the Northern Pacific.

In the record of this case a large number of other railroads were made parties, but as the case progresses your Honor will see that their position in the case is of lesser importance, and the whole case turns practically around the rates applicable over the lines of the three chief lines which I have mentioned.

I will refer a little later to some of the earlier facts which perhaps bear in a historical way on the development of the lumber industry in the Northwest, and the history of the rates; but speaking particularly with reference to this litigation, perhaps it would be better to begin at the time when the litigation arose, so that we may have clearly in mind just the present situation.

On November 1, 1907, the carriers engaged in bringing lum-

ber from the Pacific coast, filed with the Interstate Commerce Commission a new tariff of rates covering that traffic. That tariff is known as Interstate Commerce Commission No. 850. It was published by the Trans-Continental Freight Bureau, an association of carriers for the more expeditious and uniform handling and publication of tariffs, the headquarters of which is located in Chicago. It a mere agency for getting out tariffs.

There are a great number of rates involved in a tariff of that kind, and it will serve no purpose to refer to more than two or three of those rates as typical rates, because the balance of them all surround the base or fundamental rates.

The rate just prior to November 1, 1907, and which had been in effect for a number of years, from Pacific coast points to St. Paul, was 40 cents a hundredweight on fir lumber. I speak chiefly of the fir lumber rate. There are certain other rates on different kinds of lumber which are of lesser importance in this hearing, but the fir lumber rate is the chief matter involved.

As I say, the previous rate from the coast to St. Paul was 40 cents. The previous rate from the coast to Omaha, as a typical Missouri River point, was 50 cents. The rate from St. Paul to Chicago was 10 cents. That made a rate through St. Paul to Chicago of 40 plus 10—or 50 cents. If the rate to Omaha was 50 cents, as I have stated, in order to carry lumber to Chicago through Omaha, those lines would have to make the same rate as applied through St. Paul; that rate, as I have already said, was 50 cents, and therefore the Omaha rate of 50 cents was applied clear to Chicago, through the Omaha gateway, and therefore the rate to Chicago via St. Paul or via Omaha was 50 cents. It is perfectly plain that with two competing lines one cannot charge a higher rate than the other and get any of the business. They have to meet the rate, just like two merchants who sell the same kind of goods have to sell at the same price; otherwise one gets the business and the other gets none.

By the new tariff, filed on November 1, 1907, an advance was made in those rates. Instead of a rate of 40 cents from the coast to St. Paul, it was advanced to 50 cents—an advance of 10 cents. The Omaha rate of 50 cents was advanced to 55 cents—an advance there of 5 cents; and, by a similar line of reasoning, the Chicago rate was made 60 cents. Those rates applied, as your Honor will see on the map, from the Coast territory.

As your Honor is well familiar, the Cascade mountains, running north and south, parallel with the Pacific coast, leave on the west side, between the coast and the top of the mountains, a large district, which is heavily timbered and covered with timber of large, magnificent proportions; and the district west of the Cascade mountains to the west is embraced in the district which will be frequently referred to and is often spoken of in the record as the Coast district; the Coast basis of rates applies from that territory. On the east side of the Cascade mountains, as you go down the slope, there is some timber, not however of the same magnificent character as that on the west side. It will be mentioned (and is in the record) at times that on the east slope of the Cascade mountains there is a slightly lower basis of rates. But that country is not much dwelt on in the testimony, and for the present purposes it is not necessary to speak further about it.

As you go away from the Cascade mountains, coming east, you come into an open, treeless country, perhaps three or four hundred miles in extent, which is a large wheat and grain-growing country, no timber or lumber practically involved. I am speaking now particularly of the state of Washington. I think what I say is also largely true of the state of Oregon. As you approach Spokane you begin to go up the west slope of the Rocky mountains and you find timber again. There has always been a rate basis from Spokane to these eastern destinations. In the early days, when the first rates were put in, the same rate applied as a "blanket," as it is called, all over the western country, but there was no lumber being cut in Spokane except for local consumption and perhaps for short distance shipment in the state of Washington; there was no eastern shipment. By later tariffs, when the manufacture of lumber began in Spokane, a slightly lower scale of rates began to be installed for eastern shipments from Spokane.

As we come further east and continue up the slope of the Rocky Mountains, we come to another district which, on the Great Northern road, is typified by Kalispell, Columbia Falls, Whitefish. On the Northern Pacific the shipping points are Hamilton, St. Regis, Missoula; down on the Union Pacific and Oregon Short Line Railroad, Boise, Idaho, and Baker City. Those shipping points have come to be called the Montana-Oregon basis or to be found in the Mantana-Oregon rate territory, and by the tariff of November 1, 1907, a differential, as it is called—that is to say, a rate lower than the Coast

rate—was given to the Montana-Oregon territory. So, roughly speaking, by the tariff of November 1st the Coast rate was used as a base, and the Spokane territory had a differential under the Coast, and the Montana-Oregon territory an additional differential under the Coast for shipments to Missouri River country and beyond.

Now, the rate, previous to November 1, 1907, from Spokane to St. Paul, was, as I say, 40 cents. It was a blanket rate—the same rate as the Coast had. To Omaha there was the same rate, of 45 cents. The Coast rate to Chicago was 50 cents. So there was a differential, even in those days, to Omaha, of 5 cents. The rate to Chicago from Spokane was 50 cents, the same as the rate from the Coast. By the new tariff of November 1st the St. Paul rate was advanced to 50 cents, as I have stated, but the Spokane rate was advanced to 45 cents, leaving a differential of 5 cents; so that Spokane had a 5-cent less rate to St. Paul than the Coast had. To Omaha the rate from Spokane was 50 cents, from the Coast to Omaha was made 55; so the 5-cent differential was preserved there. To Chicago the Spokane rate was 55 cents, and coast rate being 60 cents—the 5-cent differential being preserved there. The Montana-Oregon basis rate to St. Paul on November 1st was made 43 cents. So we had from the Coast 50 cents, from Spokane 45, and from Montana-Oregon country 43 cents, and there were corresponding rates to Omaha and Chicago.

Now, in the tariffs the forest products are grouped in groups A, B, C, and D. Fir lumber falls in Group C. There are other groups which I will not identify except in this way: long timbers, taking two or more cars, and cedar lumber and shingles have always taken a higher rate than fir, they command a higher price, and the conditions of traffic and the commercial conditions surrounding them are on a different basis than on fir lumber, and you will find in the tariffs a higher scale of rates on those other kinds of products; but the mere mention of that will be sufficient at this time to account for the different groups which the tariff shows and the different rates, but, as I say, the important consideration I think in this case will be the base rate or the rate on fir.

Now, when that tariff was filed, it was filed to become effective November 1, 1907; it was filed more than thirty days prior to that time. These complainants were brought before the Interstate Commerce Commission by different interests, the lumber interests of the state of Washington being repre-

sented by the Pacific Coast Lumber Manufacturers Association and other firms and individuals interested in the manufacture and shipment of lumber, and in another district of the state the Southwest Washington Lumber Association, and in the state of Oregon the Oregon & Washington Lumber Manufacturers Association and allied interests, bringing their separate complaints, all alleging in substance that the advance in rates was excessive, and that the resultant rates shown in the new tariffs were unreasonably high. Coincident with this complaint, or substantially so, representatives of the Spokane lumber district brought complaint, the title or name of the first complainant being the Potlatch Lumber Company, located at Potlatch in the state of Washington, and other manufacturers in that district. They brought their complaint, which was not heard by the Commission with the Coast cases, but heard later, and decided all together at the same time.

The issues were joined and hearing was had, December 17, 1907, before the Commission in Washington, in the Coast cases. In March a hearing was held in Washington before the Commission, in the Potlatch case, involving the Spokane rates. An argument of all the cases was had before the Commission. On June 2, 1908, the Commission handed down its decision, with which your Honor is perhaps familiar, but which partially sustained the position taken by the carriers; in the remainder of the matter it denied their position, and the Commission, under its power alleged to exist in the amended rate law, established a scale of rates applicable to this traffic. Those orders were modified in certain minor particulars during the ensuing two or three months and extensions were necessarily granted of the effective date, and on October 15, 1908, the tariff became effective covering those rates.

These suits have been brought to test the validity of the order of the Commission, and they have been brought under the rules of law as we conceive them to exist, as laid down by the decision not only of the Eighth Circuit Court of Appeals, to which I will briefly refer in a moment, but other courts, including the Supreme Court of the United States; and as we conceive the matter to be, it will be your Honor's duty to try these cases de novo.

To understand the conditions which brought about the change in those rates, I think it important to dwell for a moment on the history of this lumber industry.

In 1893 the Great Northern road was completed to the Coast. That date becomes important because that brought

about a change in rates. At that time, as your Honor well knows, the production of lumber in Minnesota, Wisconsin, and Michigan was at a high tide. The testimony in this case shows that the output of white pine lumber was fully supplying all of this middle western country. I recall one witness testified that the city of St. Louis which now, today, is down almost at the gateway of the yellow pine district of the south, was built of white pine from the north. There was such an abundance of that output that it supplied the markets of the states of Iowa and Missouri, largely in the states of Kansas and Nebraska, eastern states, etc. It was the only lumber industry in this middle western country that was furnishing lumber, all grades, for the building up of the country.

The rate situation (in the briefest outline) on white pine has a great deal to do with the lake rates from Duluth to Chicago. The schooners carry lumber from the head of the lakes to Chicago, and have always done so; and when I mention the rate of 10 cents from St. Paul to Chicago for a haul, as your Honor knows, of nearly 500 miles (not quite) it is important to recognize the character of that rate. It is made so because of the rate from Duluth by water, and by schooners and tramp steamers to Chicago. It is what is called a rate forced down by water competition. The rail carriers have to meet that kind of a rate; otherwise they will get little, if any, of the business. That low rate from Duluth to Chicago has had its effect on rates into that whole intermediate territory, and it is within the last two or three years, to my knowledge, that rates out in central Iowa have had to be reduced because the all-rail rates from northern Minnesota points to central Iowa were found to be higher than the combination through the lakes. So, that brought about a low scale of rates for the shipment of northern lumber down into this middle western country. That was the condition of the white pine industry, in the very briefest outline, along about 1893.

Now, about that same time, or some few years before, the yellow pine industry began to creep north. It will appear in this case (and the record, I think, is pretty clear on it already) that the great movement of traffic at that time was to the south, over the Illinois Central. They had little, if anything, to bring to the north. Their cars came back empty. They were looking for something to balance their traffic, and the yellow pine in enormous quantities in the south offered a traffic of that kind, and there began a movement of yellow pine lumber to the north. They were able to make a very

low rate for the reason, as I say, that they had these empty cars coming north. They had a water grade road, practically no operating difficulties. But in order to meet the competition of the northern pine which was already installed in the country, they required a low rate, because the northern lumber already had a low rate for the reasons which I have stated to you. That brought about a scale of rates from the south up into such country as St. Louis and all the middle country here. Those two lumbers went from the north and went from the south in 1893 and the following years, and were in sharp competition in all that middle country, reaching as far as Colorado, the testimony shows, Nebraska and Kansas. Those two lumbers had the market completely at their control. Each had a low basis of rate; and, to my conception, those low rates relate and have their origin, first, in the lake situation; and, second, in the traffic conditions of the lines leading to the south, needing something to fill their empty cars coming north. As time has gone on the movement and growth to the south has greatly increased; it continues to offer and furnish empty cars in the south for return lumber loading, and in that particular, as will indicate a little bit later, their conditions have been markedly different from those of the western roads. Their traffic continues to be well balanced in the south; their grades and operating conditions are of the most favorable. I merely make that suggestion now, because you will see the pertinency in a few moments.

Your Honor recalls the financial conditions in the country in 1893. Prices were at a very low ebb. We were just in the midst of a panic, and it was several years before we began to come out of it. In 1893, as I say, the Great Northern road was completed through to the Coast. At that time the Northern Pacific was already there and had been for some years. It had been through one receivership and was approaching a second. The Union Pacific lines were already at the Coast. Their history is well known. At that time there was not a movement of any kind, I think; if there was, it was so insignificant as not to be entitled to mention. There was no movement of lumber east-bound from the Coast. There was a scale of rates, however, and the rate from the Coast to St. Paul was then 55 cents—approximately at that time. It changed from time to time, but approximately in 1893 the Coast rate to St. Paul was 55 cents. The Coast rate to Omaha was 55 cents, and the Coast rate to Chicago was 60 cents. As I say, in those days the manufacture and eastern shipment of lum-

ber either in Spokane or the Montana-Oregon territory had not begun, and while there were to some extent rates applicable from those districts, they were what in the railroad world are called "paper" rates. They moved no business, because there was none to move. Generally speaking, the scale of rates that applied at the cosat applied all over that country west of the summit of the Rocky Mountains, as a blanket. There are exceptions to that, but that is the general situation, and the chief reason was there was no business from any part of the Coast and there was no east-bound shipment worthy of the name from the Coast under that scale of rates. The situation of the Great Northern road when it got to the Coast was the need of business. At that time the drift of traffic was altogether to the west. The manufacturers in the east were shipping their products to the west for the building up of that country. The people out there had nothing to ship east. The testimony will show you that, after the Great Northern road got to the Coast, for some years the cars came back empty from the Coast, almost without noticeable exception. The traffic was all one way. The Coast industry had begun many years before, but it was devoted to what they call coast-wise shipments, that is, by schooners and steamers down to coast points and then perhaps shipment inland, and also to local consumption. There were mills there, many of them, and there was doubtless a profitable and extensive industry, but the eastern shipment was the question I have reference to. At that time, the proof is, the prices of Coast lumber were very low; naturally they would be because of the tremendous abundance of the product out there. But the importance of that situation in reference to the price is in connection with the competition which that Coast lumber had to meet if it came east, to compete with Minnesota northern pine and the yellow pine from the south.

In order to get some east-bound loading, the Great Northern road inaugurated a reduction in the lumber rates, and in place of the 55-cent rate, which I have mentioned, from the Coast to St. Paul, it made the rate 40 cents, and corresponding rates were automatically put in at other eastern destinations.

The Coast lumber, in order to move, had, as I say, a set of conditions which required a low rate. It had to come in and begin to displace the northern or the southern product. It was a strange and unknown product. It needed favorable consideration for that reason. The railroad needed business.

It needed something to load its empty cars back, and anything, any price almost that would pay the difference between the cost of carrying an empty car back and bringing a loaded car, was just that much profit and that much on the right side of the ledger.

But, as I say, it is essential to recall and keep in mind the existing conditions that the northern and southern lumber had created in the country to which we were beginning to bring the western lumbers. Those lumbers were at a low ebb on price, they had low rates, and their sources of supply were comparatively near to the places and points of destination and consumption; to bring Coast lumber from the Pacific district, 2,000 miles, to lay it down in Chicago, Iowa, Kansas, Missouri, all this middle country, called for a very low and. what we have come to thoroughly believe, was an abnormal basis of rates, and was justified at that time by reason of all of those conditions. The chief and underlying condition was that the railroad was justified at that time, because its own costs of operation were at a comparatively low ebb. Wages were then low compared to what they have been since. Cost of construction was low. Bridge timbers and lumber products themselves, which the railroads require in large measure, were low. Every element of operating cost was low compared with what it has been since. They had their empty cars coming back. Anything that would fill an empty car and give a little revenue was simply that much aid in the successful operation of the road. It was what was called surplus business, of which you will hear more later on, and that class of business, as the books have recognized and the Commissions and the courts have recognized, justifies that kind of treatment; it justifies the putting in of that character of a rate, and so long as it remains surplus traffic it may continue, but changed conditions necessitate a different rate.

It was some years after 1903 before there was any notable advance in the movement from the Coast. The proof will be that, continuing down to 1900, the growth of the business was slow, and of that I think your Honor will be satisfied because of the low ebb in prices, because of the continuance of the supply of lumber from the north and also from the south. After 1900 conditions began to change, prices began to go up, the country began to grow, and we all know what the conditions have been since. This rate, as a practical matter in the opinion of the railroad companies, ought to have been advanced some time before, but delay was made in the effort to

find other forms of traffic to fill in and bring out more revenue, and for that purpose there is proof in the record showing the effort to develop an export and import trade with the countries beyond the Pacific Ocean. I merely mention the fact to explain what the record shows. For a year or two there was considerable advance in that business and it did furnish loading for cars, but that has disappeared, for reasons which are not important now to mention, and that effort failed.

Now, those are, in brief, the conditions that underlay the situation at the time the rate of 40 cents to St. Paul and 50 cents to Chicago was made.

Along in 1905 and 1906 it became very apparent that the tremendous change in conditions required a new consideration of this rate basis. The railroad cost had enormously increased. You will be told of the increase in wages, of all classes of service—since 1902 from 20 to 40 per cent., embracing every class of railroad labor. In ten years taxes have increased nearly 50 per cent. Lumber for railroad work, all kinds—car sills, drop sidings, bridge timbers, and every kind of lumber—and your Honor knows that the railroads are the chief purchasers of lumber in the country—advanced 121 per cent—more than twice as much—since 1896. Those elements drew attention to themselves in the consideration of the question whether that rate could possibly be longer continued. The empty car haul, by reason of the great growth in this lumber business and the shipment of it east, had completely reversed itself. Mind you, as I have said, in 1893 we were hauling our empty cars back from the Coast, empty—we had nothing to put in them. There was a little silk from the Orient, a little tea, and occasionally some dried fruits, canned fruits, canned salmon, but in such minor quantities that it did not furnish loading for one car in twenty, and light character of loading at that.

With that condition existing in 1893, when the rate was made, we find that in 1905 and 1906 we were hauling westbound—for instance, through the Cascade mountains there is a tunnel, and by actual count, in the summer of 1907, in the month of June, there were 66 cars counted through that tunnel that day going west; in July there were 89.

The Master: Going west or east?

Mr. Holden: Going west. In August there were 54 counted west through that tunnel, and so on. Now, I do not claim that those cars moved west all the way from St. Paul, but I

do assert that the proof shows that a large percentage of their mileage was empty west-bound, and I do assert that the proof will satisfy your Honor, and more than that I will indicate to you that the Commission in its orders in this case, and in its opinion, finds that the trend of empty car movement has strongly reversed itself and is now west-bound. I think it is a fair statement that between 35 and 40 per cent of the west-bound movement of cars is empty. Now, why? There is no industry on the Coast that calls for that amount of empty cars. We carry a great deal of stuff west, loaded, and those cars are made empty, and the proof will show you that they will furnish all the empty cars for the other kind of traffic, such as there is shipping east from the Coast, and you will be satisfied from the proof that the call for empty cars on the Coast is for lumber. That is one of the elements of increased cost—the movement of those empty cars constantly to the west to fill up with lumber loading.

It is only worth while mentioning just the fact that this enormous tonnage of lumber has brought about enormous capital expenditures to make the traffic move more rapidly and with less expense. The record will show enormous expenditures in the way of line changes, the lengthening of sidetracks, passing tracks, reducing grades, tunnels, and matters of that kind, the purchase of larger equipment, cars and locomotives. And when you come to know and understand the tremendous volume of the lumber traffic, you will be satisfied that a large amount of that expenditure has been caused to answer the demands and respond to the demands of that traffic. You will be told (and the record shows) of almost a total inability at times, during the height of the traffic in lumber during 1906 and 1907, of these railroads to handle it. Car shortage existed, to the great mortification of the railroads, and yet to their absolute inability to remedy it, and their lines were completely broken down with the excess of traffic, and the larger factor of it all was the lumber traffic. It is mentioned in the record that they have built from Portland to Spokane just recently, and got it open, the Spokane & Seattle road. The Northern Pacific and the Great Northern have built it together. It eliminates some of the heaviest grades in the state of Washington and Oregon. They spent over $50,000,000 of new money, and a large portion of that is to make the eastern transit of lumber easier and more rapid.

Now, all of that money has gone into these properties. It

has got to be treated as any other capital investment must be treated. It is entitled to a return. And when it is said to you and when it appears in this record and in the opinions, that the amplification of these systems has made the transportation of lumber cheaper and easier, there may be truth in it—we hope it is true after spending all this money, and it ought to be true—but it must not be forgotten that if it is true it has come to be true at the expense of enormous sums of money spent in the lines I have mentioned.

The conclusion of the Commission, I take it, have recognized the force of the claim made by the carriers for this advanced rate. The chief and essential ground upon which the demand is based is the changed conditions, the enormous increase in the cost of doing business. The Commission, as I say, sustained our position practically one-half. They permitted an advance of 5 cents east of the Missouri river. I should indicate to you what becomes a by-word and a common saying in this litigation—the Commission drew a line which they called the line from Pembina to Port Arthur. Pembina is a station on the international boundary, or approximately so; it is on the Red River, the western boundary of Minnesota. They drew a line through Pembina, running approximately due south, following the state lines approximately until you get to Sioux City, and then the Missouri River down through Omaha and Kansas City, and then the line of the Kansas Southern road to Port Arthur, Texas, and that is the Pembina-Port Arthur line. West of that line they restored the rates as they had been, denied the application for an advance. East of that line they permitted an advance of 5 cents. So I say the reason, the only reason that can appear and the reason the Commission gave, is that they recognized and sustained our position to that extent. Two of the Commissioners dissented from the majority opinion and agreed substantially with the carriers' position. Now, as a lawyer I recognize that a dissenting opinion of a court is of no authority, notwithstanding that we all know at times later consideration by the same court leads to the adoption of the dissent as the sound law. But the Interstate Commerce Commission, as my friends on the other side will bear down on to you with great emphasis, is an expert body, and I claim and will claim in the final argument of this case that the dissent of these two members and the reasons given by the chairman are a matter of which your Honor must take into considera-

tion as a matter of great weight in your final consideration of this case.

We have come to an understanding with our friends on the other side, for the purpose of expediting the hearing, that we shall use substantially the record taken before the Commission. In addition to that we shall offer evidence on behalf of the Northern Pacific and the Great Northern Roads showing the present value of the properties.

Now, I want to explain my purpose in that so there will be no misunderstanding about it. I do not claim that that evidence has any direct bearing upon what is a reasonable lumber rate. But the issue is practically tendered in the answer of the Interstate Commerce Commission in this case, and I will refer to it later. But it will be our aim and effort by this proof to show that the present value of these properties is such that the earnings derived therefrom bring to the owners of the property far less than a reasonable return upon the property or the value of the property devoted to the public use. If that be true, the fundamental principle exists that the owners of these properties have a legal right to a greater return if, without violation—and, mind you, I say this so there will be no misunderstanding of the question—without the violation of any other principle or public right, that increased return can be lawfully secured.

It would seeem to rest in the mind of the Commission, and has appeared in various other ways heretofore, that the returns of these roads—the northern roads and the Union Pacific road—have been so ample in the past and at the present time as not to entitle them to any increase in revenue or any advance in rates on any item of traffic; on the contrary, that the trend should be the other way. The trend is the other way. Across the hall, the trend is to be indicated by the action of the State of Minnesota. There is a constant lowering of rates going on all over those systems.

This lumber rate, as we shall hope to prove, being lower than it has any right to be, this lumber traffic being at a rate lower than it has any right to move on, has not been carrying its fair share of the transportation burden; and if other rates must be lowered, as they are being lowered, rates such as this lumber rate must come up, because the principle is well recognized that one form of traffic cannot move at the expense of other forms of traffic.

So, I say if it appears that the return on these properties

at their fair value is less than a reasonable rate of return, and if it appears that this lumber rate is lower than a reasonable rate, we shall point to the valuation of the property and the return made on it as additional reason and as justification in law for bringing up this lumber rate to a reasonable basis, but no further; and I do not claim that the financial operations of a railroad system, good, bad or indifferent, will ever justify—they never can justify the charging of an unreasonable rate. That principle is too well settled to need further mention. But if the rate is below what it might properly and lawfully be and still remain a reasonable rate, the owners of these properties have a right to have that advance made on that commodity.

The Master: Would that be very material where the inquiry was directed merely to one commodity?

Mr. Holden: As I say, it is not material as to the character of the rate. It offers no guide in determining whether the 40-cent rate or the 50-cent rate is a reasonable rate; but in view of the issue tendered in the answer, in view of the opinion of the Commission, which will doubtless be brought before your Honor, tendering, as I conceive they do, an issue on that subject to be met, we are not satisfied to leave the record in the shape that the Commission has left it, by simply addressing themselves to dividends on stock or interest on bonds or the accumulation of proper and necessary surpluses. The Supreme Court has laid down so recently and so clearly that there can be no question on the subject, that the present value of the property is the value upon which the owners are entitled to earn a return, and the Supreme Court has said in the Gas case that if the value of property has increased beyond that which it originally cost, the owners of the property are entitled to a return upon the increased value; and, as I say, if it were not for the issue tendered on that subject, and (as we claim) the gross error and the prejudicial error which has crept into the consideration of this case, and bearing, as it does, against the demand of these carriers for a reasonable rate on this traffic, I would not have felt disposed to go into that issue. But I think it is proper that we should and I think it is necessary that we should, so that we may have a clear understanding on that subject and we be not left in the position as perhaps the Commission has placed us, of, regardless of the public right, demanding an extortionate dividend on stock and matters of that kind. We are not in

that position. We are not seeking an extortionate return. We are seeking, as nearly as may be, by still charging what we insist are reasonable rates, to have this property earn something like a fair return.

In the record there are a great many comparisons with the rates of other roads. The chief comparison offered by the railroads grew out of a decision of the Interstate Commerce Commission in what they call the Yellow Pine and Tift cases. The southern roads, some years ago, sought to advance their lumber rates from southern points of origin to the Ohio river. That brought about considerable litigation, and the advance was condemned. Certain rates for certain distances were considered and approved by the Commission, and the Illinois Central road, of the character which I referred to some time ago, was perhaps used as the typical road. Taking those roads as a basis of comparison, the record will show you the difference in the operating conditions of the Great Northern and Northern Pacific lines as compared with a line such as the Illinois Central; on the one hand, the Illinois Central having practically a level grade clear to Chicago from the Gulf; on the other hand, these western roads crossing over mountain ranges; the Illinois Central having an evenly balanced traffic, grain moving south and cotton and lumber moving north; these roads, as I say, now having a distorted empty car movement, hauling cars to the Coast in order to get lumber to supply the needs. Those facts will be spread before you for your consideration of the question whether or not the rates on the Illinois Central, in the yellow pine district—or at least to determine the value and the bearing of those rates with the rates which we are now asking from the west.

Another issue in this case to which a very large amount of testimony was devoted before the Commission, was the so-called commercial conditions surrounding the lumber industry. I want to be perfectly clear on that subject. Our friends the lumbermen, when they brought their complaints before the Commission, alleged in language which admitted of no misunderstanding that if these advance rates went into effect the entire lumber industry on the Pacific Coast would be paralyzed; their coast-wise trade might remain, their local trade might remain, but the great field into which they, as the expression is, have dumped their common grades of lumber, in this Middle West, would be absolutely taken away from them.

Now, mind you, the proof is that by this time and by the time when the hearing was on before the Commission, and for some time before, the Minnesota competition had almost disappeared. Everybody knows that the Minnesota, Wisconsin, and Michigan woods are pretty nearly cut out, and the proof is that the manufacturers in this northern country find more profitable markets in shipping their output east. The yellow pine still comes from the south in great volume, although the proof is that it has about reached its crest. There may be a question about that. But it still is a very active factor, without question.

Now, with an assertion of that kind by lumbermen, involving a traffic so valuable and so important to these railway companies as this, it was naturally of the gravest concern, and it naturally called an inquiry on that subject, whether or not that were true; and without doubt, if it were true, if the establishment of such rates would absolutely paralyze an industry that for ten or fifteen years had been growing and finally had reached a great volume, those rates ought not to go in. A large amount of testimony was taken upon the commercial conditions of the lumbermen, and the proof showed enormous increases in every item in the way of a price, the price of stumpage, the price of logs, the price of lumber—enormous profits. The proof also showed enormous increases in expenses, just as we have all encountered them.

Now, that proof was not taken, notwithstanding one of the Commissioners in his opinion seemed to think it was,—it was not taken for the purpose on the part of these railroads to inquire into the profits of these gentlemen or in the slightest degree to share in them. It is helpful to these railroads that they have been profitable and were making profit at that time. There is no position in this case on the part of any railroad bearing upon the purpose or justifying any charge that we, in advancing these rates, have sought in the slightest degree to share in their profits, and the only purpose for which that evidence can be and should be used is to determine the truth of the assertion that the industry cannot bear the advance. We assert that the proof conclusively proves that it can amply bear it and it ought to bear it, that the time has passed when they ought to move their lumber over mountain ranges, 2,000 miles, at any such rate. That is the only way in which that proof was offered and the only way in which it should be considered.

Now, I have just about concluded all I care to say. I think we should consider for a minute some of the principles involved in a case of this kind. The procedure in these cases has not perhaps been finally settled by the courts; but as I conceive this case to be or to mean, it is a consideration anew by your Honor of the questions which were presented to the Commission as of the time when those questions were presented. I shall meet violent opposition from my friends on the other side.

The Master: Do you mean to say the conditions that existed at the time of the hearing before the Commission?

Mr. Holden: Exactly; because your office and that of the court is to determine, as I conceive the matter, whether the Commission reached on the evidence and on the case before it proper conclusions.

The Supreme Court has said that there is no presumption of wrong against a carrier because it advances its rate. That is one of the principles which underlies the trial of a case of this kind.

"It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly, when rates are changed, the carrier making the change, must, when properly called upon, be able to give a good reason therefor."

We recognize that principle.

"But the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done. Those presumptions of good faith and integrity which have been recognized for ages as attending human action have not been overthrown by any legislation in respect to common carriers."

Now, you will hear much of the presumption which the Interstate Commerce Commission has indulged themselves in —to the limit, if I may use the expression; that because a rate has been continued by a carrier for a long period of time it is presumptively a reasonable rate and an advance in that rate is presumptively a wrong and the burden is at all times upon the carrier advancing the rate to justify it. We deny that principle. We do concede that the Supreme Court is binding upon us, and states the proper rule, that we are called upon to give a reason. When we have given a reason

and shown this enormous change in conditions, we shall contend that the burden then passes to our friends on the other side to prove that the rates we ask are unreasonable.

The Commission itself has said, and said it very recently again, that under the act, as amended, to regulate commerce, the only authority it has to change or condemn a rate filed by a carrier is when the Commission finds that the rate is unreasonable or that it discriminates. The rate-making power is still vested and left in the hands of the carriers. They make their rates subject to regulation. But, as I say, when we have given our reason and shown this enormous change in conditions, we shall contend that the burden is then upon the other side and upon the Commission, under its own announcement and under the principle announced by the courts, —that before they can disturb those rates of November 1, 1907, filed and become legally the rates of these carriers, they must find that they are unreasonable and that the reasons given were not good reasons.

Your Honor, I think, is perhaps familiar with the decision of the Eighth Circuit Court of Appeals, in the case of Missouri, Kansas & Texas Railway Company v. Interstate Commerce Commission, handed down—I haven't the date here with me, but certainly within the last year—much less than that. That was an application for a temporary injunction against the Interstate Commerce Commission and against an order made by them reducing cattle rates. Nevertheless, the court announcing the opinion, per curiam, lays down certain rules for the hearing of cases of this character, which, without doubt, will be of importance to you in considering this case. They say in one rule that "the power to determine and prescribe what are just and reasonable maximum rates to be charged in interstate commerce is in a limited way conferred upon the Interstate Commerce Commission by existing statute law. But the Commission acts only as a legislative or administrative board, and not judicially. Its determination or action does not and cannot preclude judicial inquiry into the justness and reasonableness of the rates within the meaning of the constitutional guaranty, for that is a judicial question." I shall not read all of these rules, because they are not important at this time. But as to determine how far your Honor shall go—and there is a point in which we differ with our friends, and the pleadings show our differences—as de-

termining how far your Honor shall go in considering the facts anew, the Court of Appeals says:

"It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to the ascertainment of what was determined by the Commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but, on the contrary, the hearing may be de novo and may include the taking and consideration of evidence other than that before the Commission."

Now, we have, however, an expert body—this Interstate Commerce Commission having passed upon the facts, and it will be urged that its action is conclusive, like the finding of a jury on the trial court. Without doubt its finding has persuasive bearing to any man's mind. I am not going to quarrel with any such principle as that, but my assertion is that it is to your Honor to exercise in the last analysis your own independent judgment, giving the Commission's finding such weight as you may find from your consideration of the evidence it may be entitled to.

Now, to indicate that I think I am right on that, the Supreme Court of the United States, in an analogous case, the Knoxville water case, announced January 4, 1909, met the point. There was a case where a Master had been appointed to determine the sufficiency of certain water rates imposed upon a water company, and it was argued in the Court of Appeals and in the Supreme Court that his findings were absolutely conclusive, and that the reviewing court could not go behind those findings. Now I want simply to call this to your Honor's attention so that it may be in your mind in determining the scope in which you will view these facts. "In view of the character of the judicial power invoked in such cases, it is not tolerable that its exercise should rest securely upon the findings of a Master even though they be confirmed by the trial court. The power is best safeguarded against abuse by preserving to this court complete freedom in dealing with the facts of each case—complete freedom. Nothing less than this is demanded by the respect due from the judicial to the legislative authority. It must not be understood that the findings of a Master confirmed by the trial court are without weight or that they will not as practical questions sometimes be regarded as conclusive. All that is intended to be said is, that in cases of this character, this court"—the Supreme Court speaking now—"will not fetter its discretion or judgment by

any artificial rules as to the weight of the Master's findings, however useful and well settled those rules may be in ordinary litigation. We approach the discussion of the facts in that spirit."

Now, I say that marks to your Honor precisely the same view that you must take of the findings of this jury of Commissioners. While they do have weight, and at times, and in the absence of good reason, may be conclusive, yet you must approach those facts with complete freedom, without embarrassment, because five out of seven of that jury divided on the result, and the others met the position taken by these carriers to perhaps one-half of the advance claimed.

I read that decision of the Supreme Court to mean, especially in connection with the decision of the Court of Appeals here, that you have and must assert absolute freedom of judgment on these facts,—not that you are to make rates—the courts will not make rates for these carriers, but you are to determine, using the decision of the Interstate Commerce Commission as a matter of evidence, entitled to such respect as from your examination of all of this record you may think it entitled to, taking other facts and other kinds of evidence which will be brought before you, exercising your own independent judgment in the last consideration of the matter, and determine whether or not the conclusions of the Commission were justified and that the rates which they established were and are reasonable rates; or, more accurately stating it, whether the rates promulgated by these carriers on November 1st were reasonable maximum rates for that traffic. You, as I take it, will have to find, before you can sustain the order of the Commission, that those rates were unreasonable rates; otherwise, unless you can find that fact, the Commission was not justified in finding that fact.

In the pleadings in this case, the constitutionality of this law is drawn in question. In addressing myself to the facts and the issues raised by the answer, I have not intended in the slightest degree to overlook or lay that aside, but the understanding, as I understand it to be, is that the argument of that question, which has been raised by demurrer, will be taken up later, and we are all addressing ourselves to the trial of the issues presented by the answer; therefore it is not necessary at this time to further refer to that matter.

MR. DILLARD'S OPENING STATEMENT.

If your Honor please:

Mr. Holden has covered so very fully, and not only so fully but so excellently, all of the points in the case, that I shall address myself to your Honor but a very few minutes, and what I shall say shall be only in the nature of a supplement to what he has said, pointing out the questions that are to be decided by your Honor and the conclusions to be reached by your Honor along the lines as they are laid down by the law.

As was stated by Mr. Holden, there are constitutional questions raised in the case, questions which go to the very meat and marrow of the law; first, as to whether Congress could delegate to anybody the absolute power of making rates; and, secondly, whether or not, if Congress can make such delegation, in having so done in this case it has not so intermingled judicial and legislative questions as to make the law invalid. Those questions, however, will all be taken up later. They are raised by demurrers to the petition, and I need not dwell on them here, as Mr. Holden states, because of the fact that they are to be taken up later.

The points to which I do desire to specifically direct your Honor's attention are these:

This bill treats the findings of the Commission in this case and the evidence upon which those findings were based, in two ways: First, it raises this question of law: that under all the evidence introduced before the Commission, taking it for all that it proved or fairly tended to prove, that the findings of the Commission should have been very different from those which they were. Second, it says, if that is not a question of law, that if under that evidence the Commission might have reached the conclusion which it did reach; if there was enough in the evidence to warrant the Commission in reaching that conclusion (which we deny), that yet this tribunal sits to try the case, as stated by Mr. Holden, de novo. Right on those points arose the essential differences between complainants and the defendant in this case.

Let it be granted for the sake of this argument that the Congress of the United States could have appointed a body which had the right to inaugurate a scheme of rates, a body which had the right to initiate any specific rate. I say for the sake of the argument, waiving for the time being the consti-

tutional questions, let it be granted that that power rested in the hands of Congress. Under this law they have not seen fit to exercise that power.

In a case decided by the Supreme Court of the United States no later than last Monday, the case of Siler and other Commissioners of the State of Kentucky v. Louisville & Nashville Railroad, under a statute very similar to the Interstate Commerce law, the Supreme Court held that the Kentucky Commission had no authority whatever to inaugurate a scheme of rates, and when they endeavored to do so the Supreme Court held that they surpassed any power given them under the law, and permitted an injunction granted by the lower court against rates which they had put in, to stand.

And it is very interesting to note that not only was that decision given as to the Kentucky law, but that the Supreme Court of the United States instanced the Interstate Commerce law and made this declaration: that it would be wonderful to find a power so great transmitted by the legislative authority to any rate-making power, and specifically declared that no such power had been given to the Interstate Commerce Commission.

What, then, is the authority of the Interstate Commerce Commission? what the authority of the courts?

For a long time there was discussion in Congress on the Hepburn Bill, as to what authority should be given the Commission to make rates, and as to what right of judicial review should be given.

Some congressmen, who were very strong in their views that great power should be given to any rate-making body, were opposed to the granting of any judicial review. But it was recognized that if such review were not given, that the law would not be worth the paper on which it was written; that the very basis and foundation of this government is this: that all laws which take, which affect, which bear upon public or private interest must be subject to review in the court, in order that public rights may not be invaded, that private rights may not be taken from you, and that private property may not be wrongly interfered with.

So, the law finally came from the hands of Congress in this way not that the Commission shall inaugurate a scheme of rates, not that the Commission shall initiate any rate, but that—now mark you, this thought is important, and it is especially important in view of a late declaration made by the

Supreme Court of the United States—that the carrier shall have the right to make any and all rates. That is the privilege which has been left him, one he could always exercise, one not now taken away by the law.

In the language of the judges of this Circuit, there was given to the Interstate Commerce Commission the limited power—mark you, the limited power—of revising those rates, and that power can be called into exercise only when specific rates are complained of, and only in so far as a complaint embraces those specific rates.

The law declared, therefore, that when a rate is installed by a carrier, that one who feels himself aggrieved, may make a complaint of it, and if the Commission finds that that rate is unjust and unreasonable it may declare in lieu thereof what rate shall exist for the future as a maximum to be charged. And the Supreme Court of the United States, I think in the 209th, have said that the intention of the law was to leave the railways as the general managers of their own property; that the public—that is, the Commission (I use the words "that is, the Commission")—are not the general managers of the property, but they sit only as a body of review to revise the rate which has been inaugurated by the carriers.

Here comes the parting of the ways of the complainants and the Commission in this case, and it is important, as I think, in determining the decision which your Honor shall reach.

Mr. Holden called your Honor's attention to the fact that in the same case to which I have referred, the Supreme Court said that there is no presumption of wrongdoing on the part of a carrier when it has installed a rate. The Commission have acted on the theory that there is a presumption of wrongdoing on the part of the carrier, that is, to this extent: we say that if a rate has been a long time in force, there is a presumption that that rate was a reasonable rate, and if the carrier raises it there is a presumption—they do not use the words that the carrier has done wrong, but that is a necessary conclusion from what they have said—that there is a presumption that the carrier has fixed a rate which is unreasonable, and the burden rests on the carrier to show the reasonableness of the rate which he has installed in lieu of the rate which aforetime was in effect.

Now, if your Honor please, that position is, of necessity, wrong. When I am entitled to do a thing, when the law gives me the privilege to do a thing, when the law grants me the

authority to do a thing, when the law places upon me the burden of doing a specific thing, and I do it, there cannot be any presumption that in doing the thing which the law authorized me to do I have been guilty of a wrong. The Supreme Court of the United States says, and the Congress of the United States has declared, that it is the right, the privilege the duty of the carrier to handle its own rates. The carrier has the right to lower the rate, the carrier has the right to raise the rate. Therefore, it follows that the carrier in raising the rate cannot be presumed to have done that which was wrong, because he has done the thing which the law has committed unto his keeping.

But in these lumber cases, and if your Honor will read all the opinions closely, as doubtless you have, you will find that one underlying basis of the opinions of the Commission is this: that inasmuch as the rates prior to November 1, 1907, had been a long time in effect, then those rates were presumptively just and reasonable rates, and when the carrier raised the rates there was the presumption that those rates were unreasonable. I say, therefore, this: that inasmuch as the Commission started out with that false presumption, inasmuch as they left us pulling the laboring oar, inasmuch as they left us not on the level but gave us the hill to climb, inasmuch as they started out under the conception of the law that the rate in existence was reasonable and that the carrier had done wrong in raising it, that two results, to my mind, follow: First, there was an error in law upon the part of the Commission in giving undue weight to that presumption; and we say, second, that if we are incorrect in that, if we could be mistaken in that, that yet inasmuch as they did start out with that false presumption of law, that it did have its weight under the evidence which was introduced before them, and that the conclusion from that evidence, starting from the correct presumption of your Honor and of the Circuit Court, should be directly contrary to that at which the Commission arrived.

That brings me, then, to only one other point of difference in the law between the Commission and ourselves, and that is this: The Commission has taken the position all the while, in every case, so far as I know, certainly in this case, and in some other cases in which I have appeared, that when they fix a rate no court can disturb that rate unless it is found to be confiscatory, unless it is found that it runs counter to the provisions of the Fourteenth Amendment. And in describing what is confiscatory, in describing what is the taking of

property without due process of law, they have gone so far in the presentation of their argument in certain cases as to take this position: that if a rate is not reasonable in and of itself, that is to say, even if it is not remunerative, if it does not pay a fair return upon the cost of service, that that is a matter indifferent to be inquired into, because the carrier may make up a sufficient return on the remainder of the traffic carried by him.

That that cannot be the law, it seems to me, is evident from the reading of the statute itself, and the only true construction which can come from it and which we have already noted, is that the Commission cannot institute a body of rates, but passes only on the rates which are specifically brought before it. If that position be correct, then the Commission can make rate A below the cost of service when it is complained of, so rate B, so rate C, so rate D, and trim rate by rate until they have reached the point where the profits approach the vanishing point, and not until they have done that can you proceed to correct any rate put in by them.

But it is not necessary to appeal to the law, I take it, before your Honor, for in two opinions in this Circuit that position of the Commission has been overturned. There were two branches of the Cattle case; first, with reference to the terminal charge, in which it appears from the opinion that that point was argued by the Commission before the court, and they held this: that when it appeared affirmatively from the opinion of the Commission that any rate was unreasonable, immediately a question of law was raised, and without more the court would proceed to enjoin that rate. In the second branch of the Cattle case, which was heard before three of the judges sitting at St. Louis, the question then came on as to whether the contention of the Commission was right, as to whether they could declare a rate, and the carrier was obliged to accept that rate unless it proved to be confiscatory, and there again did this court repudiate the contention of the Commission, as was pointed out to you by Mr. Holden: that the rate was pre-considered in and of itself; that if it was found that the rate was unreasonable, there was no ipse dixit of the Commission which stood as an obstacle to the courts; that you would look to that evidence which was introduced before the Commission, if it was desired to introduce it before you; that, in addition to that, you could hear further evidence; that the whole question would come up de novo before the court, and it would decide for itself whether or not the

rate originally complained of, and now sought to be enjoined, was a reasonable rate.

So, again, there is that line of demarcation between the position of the Commission and our position; and again we say that in deciding as they have, in construing their powers as they have in believing that they had the right to fix this rate at what they would, and that so long as the carriers from the service rendered the shipper as a whole realized a sufficient return, that it was indifferent what a specific rate was,—I say that in acting upon that presumption it is fair to conclude that they have depressed the rate below what they otherwise would have done; and if it be not fair to conclude that, it at any rate again gives ground for approaching this question as a new question, in the light of all the evidence which shall be introduced before your Honor, and yourself determining whether the rate is reasonable.

Now, that is all, if your Honor please, that I have to say, and more than I intended to say. I desired to elaborate those views of the law just for a little bit.

I thank your Honor.

(A recess was then taken until 2 o'clock P. M.)

Mr. Teal: Do you desire us to make a statement now?

The Master: Why, if you care to.

Mr. Teal: There are certain features of it. I don't care to go into a discussion of the testimony at all at this time, but I think it might be well for the Master to understand the position that the Interstate Commerce Commission takes in this case and cases of this character. The suit is brought for two purposes: the first, testing the constitutionality—substantially testing the constitutionality of the act to regulate commerce in its most important particulars—that is, in the control of the Interstate Commerce Commission over rates for the future; the other relief sought is to have the court declare either that the rates fixed by the Interstate Commerce Commission are unreasonable—I presume using that word in the ordinary acceptation of the term rather than in the legal sense—and possibly joined with that, that the rates are so unreasonable as to be confiscatory in their nature, although from the pleadings, as I read them, no such allegation is made.

The position of the defendant in cases of this character is briefly this: there are two inquiries that a court can make respecting orders made by the Interstate Commerce Commission. The first inquiry is as to the lawfulness of the order

in itself. By that I mean whether or not the Commission has observed the rules, or rather the law, which are a prerequisite to the making of an order, as, for instance, Has a complaint been filed? Was notice given? Was there a hearing? Did the parties have the opportunity to offer their evidence? Were the proceedings conducted in due course of law and in accordance with the statute? That is one inquiry, of course, that the court could make, because if that were not so, the order would not be a lawful order. That is the first inquiry. Fortunately in this case there is no occasion for going into that branch at all, as there is no claim whatever that any acts taken by the Commission in this case were not duly taken and in accordance with law. There is no claim made, in the pleadings or otherwise, that every possible opportunity was not given the defendants, in the case before the Commission, to put before the Commission all of the testimony, and any testimony they desired to present affecting the issues as they were before the Commission.

The next question that this court has a right to inquire into is this: Do the rates, or will the rates fixed by the Commission's order be confiscatory within the meaning of Article 5 of the Constitution of the United States, in that they take in whole or in part property without due process of law or without compensation?

As the Interstate Commerce Commission views this matter, and as I think many courts do, this court is limited in its inquiry to these two propositions. Therefore, if that position is correct, the following necessarily follows: No testimony can be heard in this court at all excepting testimony going or tending to show that the rates are confiscatory within the meaning of the Constitution. Testimony cannot be introduced here or heard there simply going to the reasonableness of the rate, simply going to the question whether this court would have put in a 45-cent rate or a 42-cent rate. The evident desire of the carriers throughout the country and their purpose to make of the courts rate commissions would result not only in hopeless confusion, but would result ultimately in the defeat of any possible regulation, because the courts could not possibly attend to their legitimate business and also act as rate commissioners.

We also contend further that before any new evidence can be introduced here tending to show confiscation, or before any new evidence can be introduced here at all, it must have been first tendered to the Interstate Commerce Commission

for their consideration. Now, why? Under the act to regulate commerce no order made by the Commission is effective for a longer period than two years. This court, any court, any Commission, has the right, of course, under a rule that they may make themselves, to say that after a decision is rendered, or an opinion handed down, that you may have thirty days' time in which to file an application for a rehearing, or to open up the case for any purpose. But for the same reason, and the reason is perfectly apparent, there was written into the act to regulate commerce the right to every person appearing before the Commission to at any time during the life of that order apply to the Commission for a modification, and amendment, or indeed to have the order withdrawn and cancelled. At any time a carrier can go before the Commission, for instance, after a rate has been tried and its effect shown, newly discovered evidence, any fact or feature which they did not bring to the Commission, the law gives the right for them to bring that at any time before the Commission for consideration during the life of the order. No such right exists in any court, because after term time the order ends and is effective, and all that is left is the right to appeal.

In order to explain this a little bit, and to see the reason for this, the court will probably remember that in the early days of the act to regulate commerce—indeed, for eight years—it was presumed, and the courts acted upon the presumption that the act as originally passed gave to the Commission the power to fix rates. The Supreme Court finally held in a case that a power so great as that would have to be specifically granted. Not having been specifically granted, the Commission did not have the power, and it immediately went back to the level of what you might call a body with power to make recommendations.

Now, it is within the knowledge of every one what followed. A shipper would bring a case before the Interstate Commerce Commission. The carrier would introduce testimony or not, as he pleased. They would hear the testimony on one side; the Interstate Commerce Commission would make an order; they would promptly step over to the United States Court, secure an injunction as a matter of course, bring before that court testimony that the Interstate Commerce Commission never heard, that the complainant in that case never had an opportunity to meet, and the consequence was, and it was the result of that, that the Interstate Commerce Commission in many cases was reversed. As a result of that you heard

all over the country that the Interstate Commerce Commission as a body was of very little moment; that the courts constantly reversed them; but you never heard the other side of the story, that the Interstate Commerce Commission rarely had an opportunity to hear the testimony on both sides. The matter went along; the shippers were without a forum to appeal to; no court had a power to fix a rate; there was no place to which they could apply and secure any relief. The consequence was that the agitation continued until it became so great that it could not be denied. Then followed the amendment to the Hepburn Act. Now, what was the difficulty, and what was Congress curing? First, it certainly endeavored to give, wanted to give and intended to give the Interstate Commerce Commission the power to fix a rate for the future. That is certainly apparent. The next thing that they intended to do was they intended to give that Commission such powers and to make its orders so effective that when a shipper appeared before the Interstate Commerce Commission and the defendant appeared there, that before that Commission should be submitted all of the testimony bearing upon that case, so that the Interstate Commerce Commission should have before it, when it did act, all of the testimony, so that it could do as nearly as possible exact justice. There is no question as to that. There can be no question that that was the purpose.

Assume now in this case that this court concludes, passing upon the reasonablenes of a rate, a question of fact, a question that requires more or less expert knowledge—passing upon that question, supposing that this court should say that it believed that the rate fixed by the railroad companies to the Missouri river or to St. Paul was too high, that it believed that the rate fixed by the Commission was a little too low; that the rate on one side was unreasonably high, that the rate on the other side was unreasonably low; what is the court going to do? How is it going to furnish any relief?

It was just to avoid that sort of contingencies that Congress intended that when parties went before the Interstate Commerce Commission they went there to submit the cause and to submit it fully.

Now, you have an excellent illustration right in this case of the result of any other course of procedure. We are told here now that they intend to go into the valuation of all of these roads. When the court reads this testimony I will ask him to carefully scan the record to ascertain any testimony in-

troduced by the complainants here on the valuation before the Interstate Commerce Commission.

If valuation is such an important factor, and if valuation is so necessary to a proper consideration of this case, this court should say to the complainants, "Gentlemen, go back to the Interstate Commerce Commission and put in your valuation, let them consider it before you come to this court, and ask it to act as a Commission to fix rates or to pass upon rates." Why shouldn't it? What position is a shipper in? They have no appeal to the courts. They are bound by the decision of the Interstate Commerce Commission. The carrier is not. Any such action or any such final meaning being attached to the act to regulate commerce would as effectively wipe out regulation, would as effectively nullify it, as though there never was an act to regulate commerce passed. And no one knows this or appreciates it better than the carriers.

We will take up another question that was referred to here. It was suggested that they wished to make comparisons in rates, on testimony introduced by the complainants before the Interstate Commerce Commission. Why didn't they institute their comparisons at that time? There was ample time. Why should this court's time be taken up with instituting comparisons of rates, that is, when applied to a question of the pure reasonableness of the rate? Now, I am using the word "reasonable" in an ordinary sense. These cases that have been cited to the court—this Stickney case, this M., K. & T. Company case—when the court comes to analyze these decisions it will find these expressions as to the power of the court of looking into a rate where it shall be just and reasonable in the constitutional sense. What does that mean. It means that it cannot be confiscatory; but it never was intended under the law that the court should simply substitute its judgment as to whether a rate should be 50 cents or 49 cents or 60 cents or 55 cents, for the body that was expressly created by Congress for the purpose of passing upon these very questions. Therefore, when the testimony is offered in this case we intend to object to the introduction of any new testimony, or the introduction of any testimony at all, for any purpose, excepting testimony that may be introduced which may tend to show that the rates are confiscatory; that if that is new evidence we shall object to its introduction, because, under the law, we believe that that must first be submitted to the Interstate Commerce Commission, that these cases are not to be tried piecemeal, that the old evil and the vice of the old law

that was intended to be changed by Congress, shall not be gradually renewed and gradually created and gradually developed until it becomes a vice under the new law.

These questions, without going into that further, have been passed upon by other courts. There is a case now pending in the Supreme Court of the United States in which these very questions are being raised, which will be heard at the next October term of court, but I take it at this particular time there is no occasion for reading to the court from decisions either as to the constitutionality of the act or features of the character that I have referred to.

I want to make one short statement to the court respecting the issues that were tried before the Interstate Commerce Commission—and a very short one, too—because if it becomes necessary for us to introduce evidence we probably will go more at length into it. But there is one thing that at this time I wish to impress, if I can, upon the mind of the courts in considering this testimony. There are three trans-continental lines involved. By trans-continental lines I mean lines reaching from the Missouri river to the Pacific coast. They are the Great Northern, the Northern Pacific, and what is known as the Harriman line, consisting of the Union Pacific, the Short Line, and the Oregon Railroad & Navigation Company. Now, while the testimony in this case is being taken and is applicable to these three cases, it should be distinctly understood that by conceding this we do not concede at all that the testimony taken, we will say, in behalf of the Northern Pacific is at all applicable to the Union Pacific system, or that conditions on the Great Northern (because testimony may be taken there) are applicable to the Northern Pacific. To illustrate: the lumber traffic on the Northern Pacific was, I think, 32 or 35 per cent.—some place in there—in volume of the whole traffic, when at the same time, as I remember, on the Harriman system it was but 9 per cent. You can readily see, therefore, that a question, assuming that that question existed, of empty car movement on the Northern Pacific might not at all apply to the Union Pacific system. You might also, and would understand, that, for instance, a car of lumber going out from Tacoma, or going out from Everett or Seattle over the Northern Pacific and Great Northern as of the time this case was tried, over the Cascade mountains, went out under very different conditions from what it went out of Portland up the Columbia river. So the mere fact of the testimony being taken together, and being used, as you might say, in common, we want it very distinctly understood that we don't want

the different roads, so far as we are concerned, or have the testimony applicable to the different roads applied indiscriminately.

Another illustration, to show why that is very important: when the rates were advanced the principal reason given by the Northern Pacific road and by the Great Northern road was that the empty car movement west-bound, which it was alleged was caused by the demand to move lumber east-bound, was the principal ground on which the rates were advanced by the Northern Pacific road. Now, on the other hand, the only testimony introduced before the Interstate Commerce Commission affecting the Harriman roads, their reason for the advance was that the lumberman's profit could stand it, and that it was largely experimental, and if it did not work it could be taken out.

Mr. Dillard: That is Mr. Teal's conclusion.

Mr. Teal: I argued one case before the Circuit Court of Appeals, in San Francisco, and between Mr. Cotton, Mr. Dillard, and Mr. Dunne I had a very hard time between reading the record and telling what was the real issue. Now I state that, without any possibility of dispute, on record 2, page 407, it was testified that Mr. Miller, the only witness that I remember who was introduced on behalf of the Harriman System in this case, testified his reasons were—now, he didn't testify to this, but it was testified to, and it was never denied—and that was a meeting, I might say, at which Mr. Harriman was present, and Mr. Harriman never denied it, and it was proven by two or three witnesses who were present—that that was stated at a meeting of lumbermen with Mr. Harriman personally, in the City of Portland, and has never been denied—first, that the lumber business was prosperous and could stand the advance in rates; second, the rates were largely experimental, and if they didn't work they would be taken out.

My only purpose in referring to that now is to show how important it is to keep these different roads separate in one's mind in considering this case.

There is another thing which makes it equally important, that is not generally understood, and that it that the advance rates on the Northern Pacific, as put in, average lower than the old rates on the Harriman road before they were advanced. So that there is very decided differences between the position of these different roads, both as to the alleged empty car movement, the reasons for the advance, the physical conditions, the earnings, etc., which, if we have to go into, we will.

Another thing that I desire to call the court's attention to, without going into all of the feature of the advances, which were very fairly stated by Mr. Holden—of course they were peculiar cases. For instance, an advance from Portland to Denver of 25 per cent. on fir lumber was a little jolty in its nature, particularly after that rate had been in for a great many years, and they were right there in competitive territory with the yellow pine lumber, and everybody fighting for business. But if the time ever comes to discuss these rates and the reasons for them, it will be time enough to take it up then.

But there is one thing also that in the consideration of rates I think Mr. Holden omitted to state to the court; the gradual disappearances of the Minnesota forests was pointed out and the reasons given for the original 40 cent rate to St. Paul illustrated, and the fact was intimated that now through both the Dakotas and Montana, the treeless section of this country, it was in such a condition that there was no longer the competitive condition between the lumber, and of course, inferentially, therefore, these treeless sections were subject to the prices that might be inaugurated by the lumbermen, and that their profits were so large that they could at any rate give up a little bit of it to the transportation people.

Now, the effect of that argument, and the court will find, if it gets to trying rate cases (which may the Lord preserve it from) that there is, generally speaking, before the court two interests; one the carrier, the other the shipper, and generally speaking, the presumption is indulged in that if the carrier is satisfied and the shipper is satisfied surely everybody ought to be happy. But there is one element omitted there that is more important than either the carrier or the shipper, and that is the public, who is not always represented at these hearings. The question as to whether or not a lumberman, or any one else, for that matter, is making extraordinary profits or extraordinary losses does not enter into the rate question. The question is a simple one—is a fair and reasonable price being charged for the service that is rendered, because the carrier and the shipper, even if they had the power to enter into a conspiracy—one by the advance in prices, the other aiding the advance through an advance in rates, of imposing conditions and purchasing prices upon the treeless section of the country, or upon any other necessary of life, is a matter that has to be considered. So it is not a question of whether or not the forests of Minnesota are gone, and therefore more can be charged—I mean from that standpoint—and the court will find, as I have said, that in many of these

cases it just simply simmers down to two interests—the carriers pulling on one side for all they can get and the shippers pulling on the other side for all they can get, and in the shuffle the public is very often lost sight of.

Now, there were some criticisms made, perhaps justly, of the opinions and reports of the Interstate Commerce Commission in these cases, and what they said and what they didn't say. I do not see anything to be gained particularly at this time by presenting my views as to what the Commission said. The rates that were in effect would indicate pretty strongly that the views were pretty thoroughly understood by the carriers, and they are written in English language, and they are written plainly, and copies of them are attached to each of the answers in these cases, so that the court will have ample opportunity to see for itself what the Commission said in these cases. And the court will find that the most careful and painstaking examination of these cases was made that could possibly be made in any case; in fact, any testimony bearing upon the question at issue, which either side desired to present, was presented to and considered by the Commission.

Without entering into any further argument of this matter, or statement, there is one other feature that I find a little difficult to meet as I pass from case to case. In the Illinois Central, which was referred to by Mr. Holden as a model road, on the question of the even balancing of traffic and the fact that lumber was rather a choice commodity for that road to handle, I presume on account of the tremendous movement south, before the case is through with I shall see that the court receives a report in that case, as it may be necessary to show the facts; and you will find that in that case the chief justification for the advance of two cents in the yellow pine cases was the movement of empties south; just precisely as the chief reason for the advance in this case was given as the empty movement west. I will not take up the court's time, because it is apparently not altogether necessary to do so, except to just illustrate as I go along; and, as the Illinois Central Railroad Company is such a wonderfully well balanced traffic road, the Oregon Railroad & Navigation Company out in our state has a very much less percentage movement of empty traffic, of empty car movement, than the Illinois Central has. So that in these various cases there are a good many things to consider; and at this time, as I say, I do not think that it is important to go further into our views of what the testimony will be; but, of course, if it comes to

the point that we are required to introduce testimony, then we will outline the testimony we shall introduce and its purpose. I thank you.

Mr. Holden: Are you going to say anything, Mr. Wimbish?

Mr. Wimbish: No; I don't care to make a preliminary statement.

Mr. Holden: Then we will ask that Mr. Cooper be sworn.

THOMAS COOPER was then duly sworn as a witness on behalf of the complainants.

Mr. Wimbish: May it please the court, we desire to enter an objection to the taking of any testimony in this case, on the ground that the finding and order of the Interstate Commerce Commission as to the reasonableness of a rate is the exercise of a discretion conferred by law upon a tribunal—an expert tribunal—informed by experience, and that the finding of that tribunal is conclusive on that question of fact—the reasonableness of a rate being a pure question of fact; and that judicial review is limited to a consideration as to whether the Commission has passed an order which will necessarily offend constitutional guaranties, by the taking of property without due process of law or just compensation. In other words, we insist that the discretion of the Commission in condemning rates and in fixing maximum rates is not subject to review in the courts unless constitutional principles be offended; and therefore we object to any evidence relating to the mere reasonableness of the rate as a traffic proposition.

Courts will not indulge in the administrative work of determining whether a rate is just and reasonable as between the carrier and the shipper. That is quasi-legislative and administrative. And from the Regan case on the Supreme Court and every Circuit Court and every Circuit Court of Appeals has consistently followed that principle, and they have never gone into the question of the mere reasonableness of a rate as between the carrier and the shipper. But the court will inquire whether rates made by a State Commission or under federal authority, or any other governmental authority, are so palpably and unreasonably low as to necessarily amount to confiscation; and if the court finds them to be so, the court will, of course, enter a decree accordingly.

Now, if the purpose of this testimony is to show the value of either of these complainant lines, for the purpose of deducing the inference of confiscation, then, we object to it, first, on the ground that such testimony must, under the Hepburn law, be first presented to the Interstate Commerce Commission. While that Commission is not constituted to try pure questions of law, yet they are entitled to have all the facts bearing upon the reasonableness of the rate before them, in order that they may have an opportunity of doing exact and equal justice; and if a rate is so low as not to afford the carrier the cost of the service in that particular rate, or if as one of a body of rates it is so low as to deprive the carrier of a fair return upon its legitimate investment, then that rate is unreasonable and the Commission ought to have an opportunity of knowing it.

We would object upon the further ground that the bills in these cases present no allegation of confiscation. I read the bills in vain to find anywhere even so much as a distinct intimation that all of the revenue derived from all of the traffic on either of these complainant lines is not sufficient to yield even a generous return upon the value of their investment.

Now, there is an allegation that these lumber rates are abnormally low—so low that while the carriers cannot determine and therefore declare the cost of the service exactly, yet they do say that the rates do not yield the cost of the service and a fair return upon the investment. Now, our position is that confiscation cannot be predicated on a particular rate, but only for the entire body or schedule of rates. If a rate is so low that it will not yield the cost of service, then ordinarily that rate would be unreasonable, but not necessarily confiscatory; and a rate may be so low as not to yield its proportion of the yield derived from all traffic, and yet that rate is by no means confiscatory, because what the railroads have a right to ask is that from the whole revenue derived from their entire business that they be allowed a fair return upon the true and legitimate value of their investment, and hence, sir, we desire to object to any testimony in this case.

Mr. Dillard: Mr. Wimbish, if you don't object, for my own information—I think I followed you closely. I understand your position to be this: that if the rate is considered in and of itself and pays anything beyond the cost of service, that it must stand, unless from the whole body of the rates it may be concluded that there is confiscation of the carrier's property or revenue. Did I follow you right?

Mr. Wimbish: I think you have stated it substantially,

Mr. Dillard; but, in order that I may not be misunderstood, I will state it again.

Mr. Dillard: Well, if you will be so good, please. It may help us in the further progress of the case.

Mr. Wimbish: That a Commission vested with the power of fixing either absolute or minimum rates, may fix a rate on a particular commodity, which rate, if it yields the cost of service and anything over is not confiscatory. In other words, that confiscation cannot be predicated on a particular rate, even though the rate does not pay the cost of service. I apprehend it does not come within the general definition of confiscation. It is, of course, a reasonable rate, although the carriers may, perhaps, if they see fit, adopt a rate that will not even pay the cost of the service; but I do not think a Commission can or should impose such rate.

Mr. Dillard: But even then, if I follow you, if the whole body of rates does pay a reasonable and fair revenue, since that rate is not confiscatory, and since the court does not have the power of fixing rates, it is not within the purview of the law that the court can enjoin the order fixing that particular rate.

Mr. Wimbish: On the ground of confiscation.

Mr. Dillard: Well, on any ground.

Mr. Wimbish: Oh, no.

Mr. Dillard: Do you think the court can enjoin that rate on any ground?

Mr. Wimbish: I don't think the court has power to enjoin rates on any ground except confiscation, anyway.

Mr. Dillard: Well, that is what I understood.

Mr. Donnelly: I suppose the objection will be noted.

The Master: Yes.

Mr. Donnelly: And we will proceed with the testimony.

Mr. Wimbish: We have some of the objections reduced to written form.

The Master: Perhaps you had better read them right into the record, then.

Mr. Teal: I would like to have these read in the record, if the court please, because they are more specific, if you don't object.

> The defendant objects to the introduction of any new or additional evidence affecting the reasonableness of the rate fixed by order of the Commission in the cause referred to in the complaint, on the following grounds:

1.

A. The reasonableness of a rate being a question of fact, the determination of which is under the law committed to the discretion of the Interstate Commerce Commission, its finding thereon is conclusive, unless the rate fixed is equivalent to a confiscation of property within the meaning of the Fifth Amendment to the Constitution of the United States.

B. If the new or additional evidence offered is for the purpose of showing the unreasonableness of the rate fixed by the order in question, the complainants, under the act to regulate commerce and amendments thereto, must first present such facts to the defendant for its consideration; and such has not been done in this case.

2.

No evidence is admissible in a trial of this case that would not tend to show confiscation of the property of the complainant, and no allegations of facts appear in the complaint that show or tend to show that the effect of the rates fixed by the order complained of would confiscate the property of the complainants or any of them.

3.

No new or additional evidence is admissible for any purpose unless it affirmatively appears that complainants have first presented, or offered to present, the same to the defendant for its consideration, and have applied to said defendant for a suspension, modification or amendment, in whole or in part, of the order complained of.

4.

No new evidence or additional evidence is admissible for any purpose which was within the knowledge of the complainants at the time of the trial in the proceedings before the defendant in which the order complained of was made and entered, and which they failed or neglected to present to said defendant at the time of said hearing, nor any new evidence growing out of any facts, matters or things which may have arisen since that hearing, except such facts, matters or things are first presented by application for re-hearing or otherwise to this defendant, which has not been done in this case.

5.

No new evidence or additional evidence is admissible for as much as complainants in their said complaint herein do not set forth any reason why any of such matters or things could not be or were not presented to the defendant, nor that the complainants, or either of them, had or have in any manner been prevented from presenting to the defendant, for its consideration, any of three matters or things in the complainants' amended bill set forth, and complainants have failed to make application to defendant for re-hearing of said matter on account of such facts, or to have said order suspended, set aside, or modified.

6.

No new evidence or additional evidence is admissible for any purpose, unless it appears from the complainant either that the defendant declined to hear said testimony at the hearing and proceeding in which the order complained of was made, or that it appears since said hearing the complainants have offered to present the same to the defendant for its consideration and it has declined to hear the same, or has heard the same and refuses to modify, suspend or amend, in whole or in part, the order complained of; and no such evidence is admissible under any circumstances, unless the same would show or tend to show that the effect of the order would be to confiscate the property of the defendant.

Mr. Donnelly: Now, it may be understood, Mr. Teal, that all of the testimony may be subject to those objections.

Mr. Teal: Yes.

Mr. Donnelly: Then we will go right straight along.

Mr. Wimbish: Will your Honor rule upon the objections?

The Master: No, I will not.

Direct Examination.

By Mr. Donnelly:

Q. Mr. Cooper, state your full name.

A. Thomas Cooper.

Q. Your residence.

A. St. Paul.

Q. What connection have you with the Northern Pacific Railway Company?

A. Land commissioner.

Q. How long have you been connected with the Northern Pacific properties?

A. Since June, 1882.

Q. And in what capacities have you been connected with that property since that time?

A. I entered the service of the Northern Pacific in the month of June, 1882, as clerk in the construction department, located at Brainerd, Minnesota. I continued in that department until June 1, 1886, when I was promoted to be chief clerk in the operating department located at Minneapolis. I was there one year and was then moved to Tacoma, Washington, occupying the position of chief clerk in the construction department. I was at Tacoma one year, leaving the service of the company about April, 1888. I was absent from its service until July 1, 1889; re-entered the service then as chief clerk in the construction department, located at Helena, Montana; remained in that capacity until May 1, 1890, when I went to South Bend, Washington, as general manager of the Northwestern Land & Development Company—a company which owned the town site at that point, and in which company the Northern Pacific owned the controlling interest. I occupied that position until September 1, 1894, when I was appointed assistant general manager of the Northern Pacific Coal Company, also a subsidiary corporation of the Northern Pacific, located at Tacoma, Washington. In June, 1895, I was appointed western land agent for the Northern Pacific, located at Tacoma, Washington, and occupied that position until July 1, 1901, when I was appointed assistant to the president, still located at Tacoma, Washington, and occupied that position until April 1, 1902, when I was appointed general manager of the Northern Pacific, and moved to St. Paul. I occupied the position of general manager until April 1, 1904, when I was appointed to my present position of land commissioner, in which I have continued since, with residence at St. Paul.

Q. What are the duties of the land commissioner, Mr. Cooper?

A. The land commissioner has charge of the company's land grant, also of its right-of-way, station grounds, and terminals, the purchase of all new right-of-way and all real estate that the company requires; has charge of the leasing of the right-of-way and other property of the company, the sale of it when any of it is sold. In other words, he has general charge of the company's real estate, whether it is land grant or operating property.

Q. Are its duties such as to familiarize you, or the person who holds the position, with the values of the real estate of the company?

A. Yes, sir. I have the purchase, or pass upon the purchase, of all of the property that the company acquires. And in connection with the leasing of its property, which is made on the basis of six per cent of its value, I necessarily have to become familiar with its value for that purpose.

Q. Have you prepared a statement, Mr. Cooper, showing the property purchased by you as land commissioner since you have held that position?

A. I have.

Q. That covers the period from December, 1904, down to the present time, does it?

A. That is correct. While I was appointed land commissioner on April 1, 1904, I did not have charge of the operating property of the company until December 1, 1904. Therefore, this statement covers the period that I have been land commissioner and also have had charge of the operating property of the company.

COMPLAINANT'S EXHIBIT 1 (COOPER).

SCHEDULE OF PROPERTY PURCHASED BY THOMAS COOPER, LAND COMMISSIONER, NORTHERN PACIFIC RAILWAY COMPANY, FROM DECEMBER 1, 1904, TO APRIL 7, 1909.

Location.	For What Purpose.	Cost.
St. Paul, Minn.	Additional Terminal Property	$437,626.52
Minneapolis, Minn.	Right of Way for New Passenger Line	181,708.17
Minneapolis, Minn.	Additional Terminal Property	59,914.34
St. Cloud, Minn.	Additional Station Grounds	2,602.50
Darling, Minn.	Gravel Pit	3,537.50
Superior, Wis.	Additional Terminal Property	226,670.32
Crow Wing County, Minn.	Iron Ore Property	82,220.00
Brainerd, Minn.	Tie Treating Yard	1,255.55
Staples, Minn.	Additional Terminal Property	31,012.97
Wadena to Glyndon, Minn.	Right of Way for Line Changes	178,491.87
Detroit, Minn.	Depot Site	10,693.50
Dilworth, Minn.	New Terminal Yard and Townsite	41,636.85
Casselton Branch, N. D.	Additional Right of Way	1,553.35
Magnolia, N. D.	Reservoir	2,019.80
Oriska, N. D.	Reservoir	19,011.54
B. F. & I. F. Ry. Co.	Right of Way for New Line	48,475.47
Alta to Berea, N.D.	Right of Way for Line Change	44,413.87
East Grand Forks, Minn.	Additional Right of Way	11,615.75
Jamestown, N. D.	Additional Terminal Property	5,268.88
Edgeley to Streeter, N. D.	Right of Way for New Line	8,347.58
Denhoff to Turtle, N. D.	Right of Way for New Line	4,807.01
Edgeley, N. D.	Additional Station Grounds	1,516.34
Sykeston Branch, N. D.	Right of Way for Snow Fences	1,044.74
Ladoga, N. D.	Gravel Pit	6,431.65
Sterling, N. D.	Reservoir	7,466.30
McKenzie, N. D.	Reservoir	2,501.75
Mandan, N. D.	Additional Terminal Property	18,680.84
Missouri River Branches, N. D.	Right of Way for New Lines	85,440.78
Sweetbrier, N. D.	Reservoir	1,010.76
Western Dakota Ry. Co.	Right of Way for New Line	6,744.67

Location.	For What Purpose.	Cost.
Glenullen, N. D...	Reservoir	$ 3,953.81
Hebron, N. D.....	Reservoir	857.68
Glendive, Mont....	Additional Terminal Property	6,301.55
Laurel, Mont.....	New Terminal Yard	40,308.81
Big Timber.....	Stock Yards	575.00
Shields River Valley Ry.....	Right of Way for New Line	8,059.16
Livingston to Muir, Mont.....	Right of Way for New Line	11,156.75
Butte, Mont.....	Additional Station Grounds	17,618.02
Garrison to Missoula, Mont.....	Right of Way for Line Changes	184,876.98
Turah, Mont.....	New Terminal Yard	9,062.99
Paradise to St. Regis, Mont.....	Right of Way for New Line	19,215.55
Paradise, Mont....	New Terminal Yard and Townsite	47,937.52
Belknap to Tuscor, Mont.....	Right of Way for Line Change	37,486.80
Noxon, Mont.....	Right of Way for Line Change	982.31
Wallace, Idaho....	Right of Way Across Ore-or-no-go Mill Site	1,000.00
Heron, Mont.....	Right of Way for Line Change	131.10
Sand Point, Idaho.	New Terminal Yard	8,939.80
Yardley, Wash....	New Terminal Yard	20,105.56
Spokane, Wash....	Additional Terminal Property	9,137.54
Palouse Branch, Wash.....	Additional Right of Way	3,512.73
Lewiston, Idaho...	Additional Station Grounds	83,833.82
Kennewick Northern Ry. Co.....	Right of Way for New Line	2,265.60
Culdesac toGrangeville, Idaho.....	Right of Way for New Line	100,084.25
Spokane.....	Right of Way and Terminals for New Line	99,610.27
Spokane to Pasco, Wash.....	Right of Way for New Line	749,344.74
Texas Ferry Branch, Wash...	Right of Way for New Line	39,427.07
Pasco.....	Right of Way and Terminals for New Line	55,443.07
Kennewick to Vancouver, Wash...	Right of Way for New Line	1,041,648.76
Vancouver to Portland, Ore.....	Right of Way for New Line	189,109.38
Portland, Ore.....	New Terminal Property	267,500.00
Vancouver, Wash..	Additional Terminal Yard	150,046.14

Location.	For What Purpose.	Cost.
Centralia to Vancouver, Wash.	Right of Way for Line Change	$ 72,162.58
Kelso to Cosmopolis, Wash.	Right of Way for New Line	300,773.80
Tacoma to Tenino, Wash.	Right of Way for New Line	1,343,368.49
Tacoma, Wash.	Additional Station Grounds	528,778.68
Tacoma, Wash.	Additional Shop Grounds	46,798.45
Seattle, Wash.	Outside Yard	67,502.03
Seattle, Wash.	Right of Way for New Lines	444,712.10
Snohomish, Wash.	Right of Way for Channel Change	15,006.70
Bellingham, Wash.	Additional Station Grounds	91,616.41
Aberdeen, Wash.	Additional Right of Way	5,986.72
Hoquiam, Wash.	Additional Station Grounds	21,532.26
		$7,680,892.15

Q. This statement, Exhibit 1, contains, as I understand it, a list of the real property purchased by you as land commissioner of the Northern Pacific Railway Company since December 1, 1904.

A. That is correct.

Q. Showing in the first column the place where the real estate is situated; in the second column the purpose for which purchased; and in the third column, the price paid for it?

A. That is correct.

Q. And the total of these purchases during the 4-1/3 years equals some $7,680,000?

A. That is correct.

Q. This property has been purchased in every state through which the Northern Pacific Railway runs, I believe, as shown in the statement?

A. Yes, sir, that is correct.

Q. What connection have you had with the purchase of the property?

A. All of the property has been purchased under my direction, and the purchases passed upon by me. That is to say, as a rule we take contracts for the purchase of property. These contracts are negotiated under my direction by my assistants and then passed upon by me, and a voucher prepared and approved by me. So that in practically every case, perhaps, every cent of money that is represented in there has been paid out on vouchers bearing my approval. And

most of the property I have seen before it was purchased; that is to say, when I am instructed to buy right-of-way for a new line I go over it in advance of any purchases, unless I am previously familiar with the country, to size up about what prices we should pay for the right-of-way. The same way with additional terminal property. For instance, the first item that appears on that list is "additional terminal property at St. Paul." That property was gone over by myself before any purchases were made, and all sized up as to what its value was and what prices we would likely have to pay for it. The same follows with the next item of the new passenger line at Minneapolis. I employed a real estate man of Minneapolis to buy that property, but before any of it was bought I walked over the line with him and sized it up in the same way that I speak of. And so on down along the line. There are some items there that I have not personally visited; for instance, gravel-pit at Darling, Minnesota—such small items as that. I have not the time, of course, to go and look at every piece of unimportant property like that. That particular item of that gravel-pit, I sent one of my men up there to buy it, and took his judgment on the price, which, however, I checked by my knowledge of the country and about what the property ought to be bought for. So that, generally speaking, throughout the whole list of property that has been purchased I have personally passed on every purchase and decided whetner the price was fair and reasonable, and in most of it based on a personal knowledge of the property.

Q. And in that way, I assume, you have become familiar with what it costs a railway company, or has cost a railway company, to acquire real estate of the character needed along the line of the Northern Pacific Railway Company?

A. Yes, sir.

Q. How familiar are you with the Northern Pacific property as a whole, Mr. Cooper? How much of it have you gone over?

A. I have been over every mile of the Northern Pacific system; not once, but frequently, excepting a new line that we recently constructed from Hoquiam, along the Pacific coast. We call it the Peninsula branch. I started once to go over that, and we had a landslide and I had to turn back. I was just trying to think the other day—I cannot recall any other part of the system that I have not been over, and I have been over most of it very repeatedly.

Q. Including both main and branch lines?

A. Including both the main line and the branches. While

general manager, of course, it was part of my work to visit all parts of the line frequently; and prior thereto and subsequent thereto I have made many trips. For instance, since last December I have been three times to the Pacific coast, and, generally speaking, I get in about four or five or six trips a year to the Pacific coast now. Not only do I travel over the rail system, but I have to make a great many excursions out into the country tributary to our line in connection with our land grants, and also in looking up possibilities for new lines. Last year I traveled 1100 miles, in automobiles, in Montana and North Dakota, on just such missions as I have indicated. This year already I have traveled 450 miles in automobiles, in the state of Washington, last month.

Q. So that over a considerable portion of the line you have been either on foot or in vehicles other than railway trains?

A. Yes, that is true west of the Missouri river—well, no; that is true west of the Red river. I have not made any trips off the line in Minnesota or Wisconsin. In North Dakota I have both east and west of the river, also in Montana. I made no trips off the line in Idaho other than one trip up in the St. Joe country and also up on the Camas prairie before we built that line. I made two trips to Grangeville before the line was constructed. In Washington I am quite familiar with it, both on and off the line.

Mr. Dillard: May I ask just one question?

Mr. Donnelly: Certainly.

By Mr. Dillard:

Q. Your exhibits there, No. 1, represents property still in the ownership of the railway and used by it for railway purposes?

A. No; no, there is some of that property that does not belong to the Northern Pacific. It is property, however, that I purchased. In other words, there is an item that I just see, Grow Wing County, Minnesota, iron ore property. That is a property that has been purchased by the Northwestern Improvement Company, which is a subsidiary corporation of the Northern Pacific, and of which company I am land commissioner. On this statement also you will find the Spokane, Portland and Seattle right of way which I purchased. In other words, this Complainants' Exhibit 1 has no reference whatever to the property of the Northern Pacific; it is simply to show property that I purchased for the Northern Pacific and these other companies. It is all property, however, along the line of the Northern Pacific, and its purpose is simply to show my

familiarity with the property and values along the line of the Northern Pacific.

Q. A good part of it is actually used now by the Northern Pacific alone, is it not?

A. Yes, that is true. The largest single item that is not used by the Northern Pacific is the right of way of the Spokane, Portland and Seattle.

Q. That is used by that railway, however, isn't it?

A. Oh, yes, yes. The Northern Pacific owns a half interest in that railway.

Mr. Donnelly: Is that all, Mr. Dillard?

Mr. Dillard: That is all I wanted to inquire about.

The Master. You say the purpose of this exhibit is to show Mr. Cooper's qualifications?

Mr. Donnelly: That is to show Mr. Cooper's qualifications principally, your Honor. It is not for the purpose of showing value. That will be covered by another statement.

Br. Mr. Donnelly:

Q. Have you prepared a statement, Mr. Cooper, showing the estimated cost at the present time of acquiring the real estate used in connection with the operation of the Northern Pacific system?

A. I have.

Q. Will you produce that, and we will have it marked Cooper Exhibit No. 2, giving Mr. Teal one.

Paper marked Complainants' Exhibit 2 (Cooper).

COMPLAINANT'S EXHIBIT 2—(COOPER).

NORTHERN PACIFIC RAILWAY CO.

GENERAL SUMMARY OF VALUATION ON BASIS OF COST OF REPRODUCTION OF RIGHT OF WAY, STATION GROUNDS AND TERMINALS ON OPERATED LINES.

State.	Acres.	Right of Way and Station Grounds.	Terminals.	Total.
Wisconsin	3,421.19	$ 414,619.00	$ 1,904,577.92	$ 2,319,196.92
Minnesota	23,929.73	4,098,555.12	24,509,679.46	28,608,234.58
North Dakota	31,876.00	8,848,155.50	2,719,611.46	11,567,766.96
Montana	51,803.82	5,505,316.50	3,807,885.78	9,313,202.28
Idaho	7,100.81	1,063,832.00	1,095,918.00	2,159,750.00
Washington	38,658.54	9,203,123.50	50,483,222.31	59,686,345.81
Oregon	1,378.55	558,080.70	481,305.00	1,039,385.70
Totals	158,168.64	$29,691,682.32	$85,002,199.93	$114,693,882.25

RECAPITULATION OF TERMINALS.

Location.	Acres.	Av. Value per Acre.	Total Value.
Superior, Wis.	949.12	$2,006.68	$1,904,577.92
Stillwater, Minn.	30.46	8,346.23	254,226.00
Staples, Minn.	63.69	5,821.95	370,800.00
Brainerd, Minn.	220.28	3,203.21	705,603.50
Duluth, Minn.	598.72	9,148.48	5,477,377.14
St. Paul, Minn.	687.56	17,680.41	12,156,343.89
Minneapolis, Minn.	292.60	18,951.91	5,545,328.93
Fargo, N. D.	108.70	9,807.31	1,066,054.68
Valley City, N. D.	78.59	5,709.77	448,730.90
Jamestown, N. D.	211.64	2,308.92	488,659.88
Mandan, N. D.	423.31	1,691.82	716,166.00
Billings, Mont.	92.50	14,902.69	1,378,498.90
Helena, Mont.	223.50	1,044.54	233,456.00
Missoula, Mont.	125.75	7,531.74	947,116.62
Butte, Mont.	110.85	11,265.80	1,248,814.26
Wallace, Idaho	86.69	6,000.00	520,140.00
Lewiston, Idaho	59.12	9,739.14	575,778.00
Spokane, Wash.	422.31	19,201.83	8,109,128.62
Pasco, Wash.	129.18	2,053.33	265,249.00
North Yakima, Wash.	74.16	17,195.01	1,275,182.00
Tacoma, Wash.	530.55	21,724.11	11,525,728.89

RECAPITULATION OF TERMINALS—Cont'd

Location.	Acres.	Av. Value per Acre.	Total Value.
Seattle, Wash.	432.60	$61,984.48	$26,814,488.18
Aberdeen, Wash.	50.67	9,382.27	475,400.00
Hoquiam, Wash.	28.85	13,669.46	394,364.00
Everett, Wash.	124.68	3,000.00	374,040.00
Bellingham, Wash.	71.69	4,610.18	330,503.82
South Bend, Wash.	34.42	8,233.59	283,400.00
Walla Walla, Wash.	31.38	11,168.39	350,464.00
Vancouver, Wash.	35.24	8,095.17	285,273.80
Portland, Ore.	18.38	26,186.34	481,305.00
Total terminals	6,347.19	$13,392.09	$85,002,199.93

WISCONSIN.

District.	Acres.	Av. Value per Acre.	Total Value.
Ashland to State Line, excluding Superior	1,914.02	$167.04	$319,726.50
Washburn Branch	415.38	182.79	75,927.00
Grantsburg Branch	142.67	132.93	18,965.50
Total excluding Superior	2,472.07	$167.72	$414,619.00
Superior Terminals	949.12	$2,006.68	$1,904,577.92
Total Terminals	949.12	$2,006.68	$1,904,577.92
Grand Total for State	3,421.19	$677.89	$2,319,196.92

MINNESOTA.

District.	Acres.	Av. Value per Acre.	Value.
West Duluth to White Bear	2,340.48	$205.89	$481,870.05
Fond du Lac Branch	236.15	428.58	101,209.20
Carlton Yards	57.04	124.00	7,073.25
Cloquet Branch	84.97	341.55	29,021.10
Miller Branch	61.06	105.00	6,411.30
Grantsburg Branch	191.44	50.83	9,731.10
Taylors Falls Branch	253.23	330.03	83,574.00
Stillwater Branch, excluding Stillwater	120.98	383.67	46,416.00
State Line to Staples, excluding Brainerd	4,400.67	83.64	368,075.20
White Bear to St. Paul	172.27	907.11	156,267.50
Minneapolis-White Bear Branch	142.19	533.43	75,847.50
Northtown Jct. to Staples	1,463.41	273.80	400,686.25
Brainerd to Little Falls	384.48	95.67	36,785.25
Little Falls to Morris	1,259.55	172.62	217,426.80
Staples to Moorhead, excluding Staples	4,993.02	219.95	1,098,212.30
Fergus Falls Branch	1,111.56	242.66	269,728.65
Red River Branch	1,442.89	316.92	457,272.95
Red Lake Falls Branch	793.01	124.82	98,984.40
Keystone Branch	74.08	120.00	8,889.60
Minnesota and International Ry. (70%)	1,911.94	50.00	95,597.25
Big Fork and International Falls (100%)	542.00	89.44	48,475.47
Totals, excluding Terminals	22,036.42	$185.94	$4,097,555.12
Terminals.			
Stillwater	30.46	$8,346.23	$254,226.00
Staples	63.69	5,821.95	370,800.00
Brainerd	220.28	3,203.21	705,603.50
Totals, excluding Terminals	22,036.42	$185.94	$4,097,555.12
Terminals	314.43		1,330,629.50
Duluth (including Union Depot Property)	598.72	9,148.48	5,477,377.14
St. Paul	687.56	17,680.41	12,156,343.89
Minneapolis	292.60	18,951.91	5,545,328.93
Total Terminals	1,893.31	$12,945.41	$24,509,679.46
Grand Total for State	23,929.73	$1,195.47	$28,607,234.58

NORTH DAKOTA.

District.	Acres.	Av. Value per Acre.	Total Value.
Fargo to Jamestown, excluding Fargo and Valley City	3,975.79	$300.00	$1,192,737.00
Jamestown to Mandan, excluding Jamestown and Mandan	5,060.70	275.00	1,391,692.50
Mandan to State Line, excluding Mandan	9,456.02	325.00	3,073,206.50
Fargo & Southwestern Branch	2,421.61	350.00	847,563.50
Casselton Branch	969.03	200.00	193,806.00
Cooperstown Branch	996.11	350.00	348,638.50
James River Branch	652.16	150.00	97,824.00
Oakes Branch	234.62	100.00	23,462.00
Devils Lake Branch	1,953.14	350.00	683,599.00
Sykeston Branch	1,519.41	150.00	227,911.50
Oberon Branch	495.04	150.00	74,256.00
Linton Branch	610.39	100.00	61,039.00
Red River Branch	1,354.73	300.00	406,419.00
Fergus Falls Branch	1,096.39	150.00	164,458.50
Fairview Branch	152.75	100.00	15,275.00
Joint property at Oakes (N. P. and C. & N. W.) one-half	86.82	500.00	43,410.00
Joint property at Linton (N. P. and C. M. & St. P.) one-half	19.05	150.00	2,857.50
Totals, excluding terminals	31,053.76	$284.93	$8,848,155.50
Terminals.			
Fargo	108.70	$9,807.31	$1,066,054.68
Valley City	78.59	5,709.77	448,730.90
Jamestown	211.64	2,308.92	488,659.88
Mandan	423.31	1,691.82	716,166.00
Totals, terminals	822.24	$3,307.56	$2,719,611.46
Grand total for State	31,876.00	$362.90	$11,567,766.96

MONTANA.

District.	Acres.	Av. Value per Acre.	Total Value.
State Line to Glendive	4,884.96	$50.00	$244,248.00
Glendive to Billings, excluding Billings	11,472.60	100.00	1,147,260.00
Billings to Helena, excluding Billings and Helena	11,863.45	125.00	1,482,931.25
Helena to Trout Creek, excluding Helena and Missoula	11,037.80	100.00	1,103,780.00
Trout Creek to State Line	1,530.80	50.00	76,540.00
Butte Line, excluding Butte	2,037.66	100.00	203,766.00
Red Bluff Branch	375.91	100.00	37,591.00
Pony Branch	98.87	100.00	9,887.00
Ruby Valley Branch	625.02	100.00	62,502.00
Rocky Fork Branch	881.19	200.00	176,238.00
Clarks Fork Branch	283.93	150.00	42,589.50
Park Branch	871.59	100.00	87,159.00
Cokedale Branch	42.70	75.00	3,202.50
Marysville Branch	255.46	75.00	19,159.50
Red Mountain Branch	185.09	75.00	13,881.75
Phillipsburg Branch	450.76	200.00	90,152.00
Coeur d'Alene Branch (in Montana)	2,560.01	150.00	384,001.50
Bitter Root Branch	923.03	300.00	276,909.00
Boulder Branch	75.18	50.00	3,759.00
Wickes Branch	7.80	50.00	390.00
Elkhorn Branch	325.65	50.00	16,282.50
St. Regis to Paradise	461.76	50.00	23,088.00
Total, excluding terminals	51,251.22	$107.42	$5,505,317.50
Terminals.			
Billings	92.50	$14,902.69	$1,378,498.90
Helena	223.50	1,044.54	233,456.00
Missoula	125.75	7,531.74	947,116.62
Butte	110.85	11,265.80	1,248,814.26
Total terminals	552.60	$6,890.85	$3,807,885.78
Grand total for State	51,803.82	$179.78	$9,313,203.28

IDAHO.

District.	Acres.	Av. Value per Acre.	Total Value.
State Line to State Line	3,256.10	$75.00	$244,207.50
Coeur d'Alene Line, excluding Wallace	317.83	75.00	23,837.25
Burke Branch	134.44	400.00	53,776.00
Sunset Branch	64.04	50.00	3,202.00
Fort Sherman Branch	183.40	600.00	110,040.00
Palouse & Lewiston Branch, excluding Lewiston	895.52	400.00	358,208.00
Genesee Branch	95.44	300.00	28,632.00
Arrow to Stites	1,155.00	75.00	86,625.00
Joseph to Grangeville	853.23	182.04	155,320.25
Total, excluding terminals	6,955.00	$152.96	$1,063,848.00
Terminals.			
Wallace	86.69	$6,000.00	$520,140.00
Lewiston	59.12	9,739.14	575,778.00
Total terminals	145.81	$7,516.07	$1,095,918.00
Grand total for State	7,100.81	$304.16	$2,159,766.00

WASHINGTON.

District.	Acres.	Av. Value per Acre.	Total Value.
Eastern State Line to Vancouver via Auburn	21,123.36	$300.00	$6,337,008.00
Auburn to Sumas	1,762.44	200.00	352,488.00
Palmer to Meeker	1,372.94	250.00	343,235.00
Palouse and Lewiston Branch	1,103.55	300.00	331,065.00
Genesee Branch	280.68	200.00	56,136.00
Farmington Branch	73.29	200.00	14,658.00
Washington Central Branch	2,009.03	200.00	401,806.00
Denny Branch—Davenport to Denny	360.02	100.00	36,002.00
Sunnyside Branch	169.50	300.00	50,850.00
Roslyn Branch	72.79	150.00	10,918.50
W. & C. Ry. Branches	2,081.00	150.00	312,150.00

WASHINGTON—Continued.

District.	Acres.	Av. Value per Acre.	Total Value.
Green River Branch	372.78	$ 150.00	$ 55,917.00
Burnett Branch	54.62	150.00	8,202.00
Wilkeson Branch	232.35	150.00	34,882.00
Crocker Branch	73.93	50.00	3,696.00
Orting Branch	94.62	50.00	4,731.00
Snoqualmie Branch	448.02	150.00	67,203.00
Everett Branch	104.57	150.00	15,685.50
Seattle Belt Line	229.64	400.00	119,856.00
Olympia Branch—Lake View to Centralia via Gate	706.92	300.00	212,076.00
Gray's Harbor Branch—Gate to Ocosta	621.89	100.00	62,189.00
Elma Branch	114.20	50.00	5,710.00
Port Townsend Southern Branch	461.16	163.08	75,204.00
Peninsular Branch	330.56	100.00	33,056.00
Cosmopolis Branch	3.53	100.00	353.00
So. Bend Branch	686.37	150.00	102,950.50
Darrington Branch	466.54	100.00	46,564.00
Yacolt Branch	353.62	100.00	35,362.00
Bellingham Branch	140.15	100.00	14,015.00
Monte Cristo Branch	788.74	75.00	59,155.00
Total, excluding Terminals below	36,692.81	$250.82	$9,203,123.50
Terminals.			
Spokane	422.31	19,201.83	8,109,128.62
Pasco	129.18	2,053.33	265,249.00
North Yakima	74.16	17,195.01	1,275,182.00
Tacoma	530.55	21,724.11	11,525,728.89
Seattle	432.60	61,984.48	26,814,488.18
Aberdeen	50.67	9,382.27	475,400.00
Hoquiam	28.85	13,669.46	394,364.00
Everett	124.68	3,000.00	374,040.00
Bellingham	71.69	4,610.18	330,503.82
South Bend	34.42	8,233.58	283,400.00
Walla Walla	31.38	11,168.39	350,464.00
Vancouver	35.24	8,095.17	285,273.80
Total Terminals	1,965.73	$25,681.66	$50,483,222.31
Grand Total for State	38,658.54	$1,543.94	$59,686,345.81

OREGON.

	Acres.	Av. Value per Acre.	
Goble to Corporate Limits, Portland	730.17	$572.49	$418,015.25
W. & C. R. Ry.—State Line to Pendleton	426.00	237.56	101,199.60
W. & C. R. Ry.—Killian Jct. to Athena	204.00	190.52	38,865.85
Total, excluding Terminals	1,360.17	410.32	558,080.70
Terminals.			
Portland	18.38	$26,186.34	$481,305.00
Total Terminals	18.38	$26,186.34	$481,305.00
Grand Total for State	1,378.55	$753.97	$1,039,385.70

LINES UNDER CONSTRUCTION.

	Acres.	Cost.
Cannon Ball Branch, North Dakota	410.06	$ 7,018.70
Mandan to State Line	569.01	50,861.10
Mandan to Glendive	1,116.23	34,579.68
Shields River Valley	171.46	14,123.58
Kelso to Cosmopolis	801.63	156,632.43
Tacoma to Tenino	834.27	1,351,639.14
Total	3,902.66	$1,614,854.63

The above represents the actual expenditures for right of way for the various lines indicated; actual construction has been commenced upon the first four lines, and it is intended to commence upon the last two lines as soon as the acquisition of the right of way is sufficiently advanced.

TERMINAL UNDER CONSTRUCTION.

	Acres.	Cost.
Winnipeg, Manitoba	320.67	$1,142,500.00

The Northern Pacific Ry. Co. owns an undivided half interest in property being purchased for a terminal at Winnipeg, the other half interest being owned by the Great Northern Ry. Co.; the acreage shown above is the total purchased; the cost represents the actual cost of the Northern Pacific's half interest.

Mr. Teal: Mr. Holden, in your opening statement, from your standpoint, you stated that the court in passing upon this question would pass upon it as of the date the Commission passed upon it. What date do you fix as the proper time in your view that the court should apply the order in this case?

Mr. Dillard: I think the question was to pass upon the reasonableness of rates as of that time, was it not?

Mr. Holden: I don't recall just what my statement was in that regard.

Mr. Teal: Your statement to the court was this: that this court must pass upon this question as of the time that the Interstate Commerce Commission passed upon it. That is the time of the advance. Now, fix that date.

Mr. Holden: The advance took effect November 1, 1907.

Mr. Teal: That is what I wanted to understand.

Mr. Holden: The testimony before the Commission, and upon which it based its conclusion, had practically all to do with conditions up to that date.

Mr. Teal: That is what I wanted understood. So that November 1, 1907, the date of the advance of the rates, is, under the contention of the complainant, the time to which the testimony should be addressed, as to whether or not the order was reasonable.

Mr. Donnelly: Of course that is probably a disputed question, if your Honor please; but at any rate we will cover the point by the introduction of this statement showing values at the present time, and then we will show how much less it would have cost to have acquired the total property as of November 1, 1907, assuming that that may possibly be the correct date, and again as of another date, to meet the possible contingency of some other date.

Mr. Teal: I just wanted to call your attention to it.

The Master: That date is November 1, 1907.

Mr. Donnelly: It was November 1, 1907, that the tariff which the Commission displaced went into effect.

Q. Will you state to the Master, Mr. Cooper, in a general way, how this statement showing this cost of reproduction has been made up; what preperation you had had in the way of preparation of similar statements in other cases, for instance?

A. In March, 1906, the company was called upon to make a report to the Railroad Commission of Minnesota, showing the value of its property in that state. I was instructed to prepare the real estate part of that report. That data I had pre-

pared, when I was called upon to testify in what is known as the Spokane rate case, in March, 1907. My testimony in the Spokane rate case was to cover practically the same as in this present case; that is to say, the value on the basis of the estimated cost of reproduction of all of the right of way, station grounds and terminals of the company. I made up for the Spokane rate case a statement in which I used, so far as Minnesota was concerned, the information that I had gathered together for the report to the Commission of that state. I had estimates made of the value of our property, or rather, you might more properly call them appraisals, of as many of the larger terminals as there was time to procure. I only had a short time to prepare myself in that case. I covered, however, in that short time appraisals of Seattle, Tacoma, Spokane, and I think some of the other terminals. I made up my estimate which I used in the Spokane rate case, by taking, as I have stated, the report that I had made for the Railroad Commission in Minnesota. I started in then at North Dakota and made up my estimate for that state, by placing before me maps showing our property commencing at Fargo and continuing west, having in front of me all of the information that we had acquired in purchasing property in that state; also the information that we had gathered together as to the value of our ownership at stations for leasing purposes; also my own knowledge of the state and the country through which the railroad passes, and I systematically made up that statement, commencing first, to illustrate, taking the City of Fargo; I made up what I considered a fair estimate of the cost of reproducing our holdings there by the use of the information that I have referred to; then leaving Fargo, I estimated what it would cost us to buy the right of way in the country till we got to the next town of any importance, which was Casselton. I then estimated in like manner the value of our ownership in Casselton. Then, leaving Casselton, took up the country value again, and so on all through the states; and in that way I made up the statement which I used in the Spokane rate case, and which statement has been the foundation for the testimony that I gave in the Minnesota rate case and in this case. As the result, however, of my experience in these two cases, and with a desire to check the estimates that I had made, I have had appraisals made of our ownership in all of the larger terminals along the line. The result is that I am now able to show in this exhibit thirty terminals, with an aggregate value of $85,000,000 out of a total of $114,000,000, all

of which terminals have been appraised carefully and are not mere guesses as to the value. I will add that in practically every case where I have had an appraisal made I have found that my estimate as used in the Spokane and Minnesota rate case was too low. A notable exception to that, however, was Butte, where I estimated the value of our property in Butte as $2,000,000. I had an appraisal made within the last month and it showed a value of $1,248,814—proving that I was entirely too high at Butte. That, however, as I have said, is the only notable exception to the rule that my estimates as used in the Spokane rate case and again in the Minnesota rate case were too low. This estimate that I now present, therefore, shows that out of a total of $114,000,000, $85,000,000 of the property is the result of careful appraisals; and I will explain that as to these appraisals they have been made in either one of two ways: they have been made either by my own assistants, aided with information procured from local real estate men, or they have been made direct by local real estate men that we employed for the purpose; and in the employment of those local real estate men they were instructed in each case to make their valuation on a basis which I can best set forth by reading the certificate that is attached to one of them, which is a sample of the rest: "We certify that the foregoing appraisal was made at the request of the land commissioner of the Northern Pacific Railway Company; that it correctly represents, according to our best judgment, the present value of the naked real estate, without improvements based upon the prices at which abutting property and other property of similar value for business or residence purposes is being bought and sold for in the ordinary course of real estate trading; and that we have made no allowance for the necessarily increased price which a railway company would have to pay in purchasing the property." That certificate is the one covering the appraisal at Brainerd, Minnesota. The appraisal in that case was made by three appraisers, all of them real estate dealers and owners of real estate in that city, old residents there and men whom we believe to be thoroughly qualified to make an appraisal. In the cities of St. Paul, Minneapolis, and Duluth we employed three real estate dealers in each city to make the appraisal of our property. This exhibit shows their figures exactly, with 25 per cent. added to cover the increased cost that a railroad company would have to pay for purchasing the property and the improvements, severance and consequential damages that it would have to pay. In Tacoma and Seattle (I am mentioning these because they are the larger

towns and cover most of the money) we used our own men there, men who were familiar with values in these cities and who supplemented their own knowledge by consulting local real estate dealers. I was able also, because of my familiarity with the properties there to check the value perhaps better in Tacoma and Seattle than in other places—Tacoma, because of my long residence there and because I kept in very close touch with values, having purchased for the company more than one-half of the property that it now owns there, also having purchased for the company considerable of the property that it owns at Seattle; also having an intimate knowledge of the properties that were purchased by the Great Northern for the joint account of the Northern Pacific and itself. At Spokane, the valuation was made there by two local real estate men, and their valuations, I may add, were very close to those made by the appraisers that the State of Washington appointed for the same purpose. So that this exhibit, in my judgment, represents conservatively what it purports to—the cost of reproducing the property of the Northern Pacific Railway Company.

Q. That is the real property?

A. The real property; talking now only of the real estate.

Q. Independent of the land grant, of course?

A. And independent entirely of the land grant, being what might be termed the operating property. I feel that it is conservative, feel that very decidedly, because every time that I have checked by a careful appraisal in the utmost detail, my figures that I had previously estimated I find that I was low.

The Master: Just one moment. Is that of this date? You say this represents your value as of what date?

The Witness: That is of this date. It is brought down to date. It will be found, by comparing it with the statement in the Spokane rate case and the Minnesota rate case that it has been increased. Some of that increase is due to the appraisals that I have had made, and some by reason of the inclusion of property purchased since I made the estimates that were used in these two cases.

Q. Calling your attention to the first sheet of Complainants' Exhibit 2, Mr. Cooper, that sheet contains, as I understand it, a general summary of the information appearing in the sheets that follows it? That is correct, is it?

A. That is a summary by states. Following it is the detail of each state.

Q. And from this general summary it appears that the total cost of acquiring at the present time, or of reproduc-

ing the real property used by the Northern Pacific Railway Company in connection with the operation of its system, is $114,693,882.25?

A. That is correct.

Q. That total is divided into two large subdivisions—that is, of terminals and right of way and station grounds?

A. That is correct.

Q. The terminals having a value, or an estimated cost for reproduction, of something over $85,000,000, and the right of way something over $29,000.000?

A. That is correct.

Q. You have stated, I think, with sufficient fullness, the methods pursued in arriving at the value of the terminals; and those values are shown in the second sheet of the exhibit, as I understand it?

A. The second and third.

Q. The second and third sheets of the exhibit. Then follows a detailed statement by states of the total value or present cost of reproducing the real property, the first being with reference to the right of way, and then the terminals in that particular state, is that right?

A. That is right. That is the way all of the statements are made up.

Q. So that, for example, taking the State of Wisconsin, it appears from your statement that the total value of the right of way of the Northern Pacific in that state is $414,619, and the total value of the terminals, $1,904,577.92?

A. That is correct.

Q. That same system has been pursued throughout, has it?

A. Yes, sir.

Q. Throughout the various states through which the Northern Pacific runs. Now, calling your attention, simply for the purpose of illustration, to the State of Montana, for example, or say the State of North Dakota; you have there a statement showing that the present average value per acre of the right of way between those points is $325 per acre?

A. What item is that?

Q. Mandan to the state line. The third item in that state, the State of North Dakota.

A. Yes.

Q. Does that mean that that is what it would cost any individual to go and buy an acre of land in that vicinity at this time, or, if not, what does it mean, and how is that value arrived at?

A. Mandan to the state line, excluding Mandan. That represents average cost per acre of buying the right of way between these two points, which means that the right of way passes through a number of fairly good sized towns, for instance, New Salem, Glen Ulen, Hebron, Richardson. Taylor, Gladstone, Dickinson—a town of four or five thousand people—Bellfield, Medora, Central Butte, Beach. The cost of getting the right of way through these towns is all included in that item of $325 per acre, average. Therefore, it is important to keep in mind, in considering this statement, the towns through which the various lines pass, and what it would cost to buy the right of way through these towns. In that district, from Mandan to the state line, I should think that the average value per acre would probably be about $20, as agricultural land, which multiplied by 3, which experience teaches us is the multiple that you have got to use to cover the severance damage and cost of improvements, would make about $60. Therefore, if that item was written so as to exclude all the towns between these points, it would come down to probably $60 or $70 per acre, instead of $325, and the difference between the $60 or $70 per acre and $325 per acre, as given in that exhibit, is what you have to pay for right of way getting through all of these various towns. It is very important to keep in mind just the relative insignificance, as I might call it, of the country right of way—that is, as distinguished from the right of way through the towns, cities, and villages.

Q. That is, right-of-way and station grounds both, I suppose?

A. Yes. When I speak of right-of-way I of course include station grounds. That was well illustrated in the Minnesota rate case, where I prepared an exhibit which shows that out of a total value of right-of-way, station grounds and terminals in the state of Minnesota of $23,487,000, as the company reported it to the state in the report called for by the Railroad Commission, as I have explained previously, this acquired right-of-way that I speak of was only $1,637,000; the three terminals—Duluth, St. Paul, and Minneapolis—aggregated about $18,500,000, other cities, towns and villages, $3,000,000 (I am speaking now in round figures), the country right-of-way, $1,600,000. These figures for the state of Minnesota (and they will apply substantially to all the other states) show the relative insignificance of what might be called the country right-of-way as compared with these large totals.

Q. So that included in the average cost per acre of what

is called the right of way is a considerable amount of what might be called city property?

A. Yes, sir.

Q. And substantially all of the cities along the line of the Northern Pacific, or the real estate owned by the Northern Pacific in all of the cities except those cities that are enumerated and grouped as terminals, are included in the cost of the right-of-way?

A. That is correct. Another good illustration which appears in this same exhibit is our Stillwater branch. The value of the right of way of the Stillwater branch, as shown in this exhibit, is $46,416, whereas the value of our property in Stillwater, the town at the end of the branch, is $254,000.

Q. Speaking generally, where is the real property of the Northern Pacific Railway Company located in these towns with reference to the business center of the towns generally?

A. The Northern Pacific was the pioneer line constructed in the Northwest. There was no development along the line until the railroad was constructed. Therefore, the towns and villages and cities have grown up along the railroad on both sides of it, as a rule, and you can stand on the depot platform at most of our stations and throw a stone into the business district. Anyone who has traveled along the line of the Northern Pacific will recognize that at once. The depot is within a minute's walk of the business part of the towns, and the smaller cities and the villages. Therefore, our property occupies property that from a railroad standpoint is about the most valuable in the towns that we pass through. And because of its location it has a decided business advantage; that is to say, we are so convenient that we attract business that otherwise we would not get where we have competition. Where other lines have not built into these towns, they have had to take a back seat, as it were, and could not get as advantageous a location as the Northern Pacific. But I do not wish to be understood that in appraising this property I have added anything for that value, as a business getter, by reason of our location. I have simply treated it purely as a real estate proposition and on the basis of what it would cost to purchase that property today.

Q. But it is a fact that the property of the Northern Pacific Railway generally along its line is so located with reference to the business center as to have special value as real estate?

A. That is correct.

Q. In getting at the value of the right-of-way in what we call the country right-of-way, you spoke in one instance of the land used as right-ofway having a value, perhaps, of $20 per acre for agricultural purposes, and of your having multiplied that $20 by 3 in order to determine what it would cost the railway company to acquire it. Why did you use that multiple?

A. The multiple of 3 has become recognized among railway people and State people who have to deal with making estimates of this kind as a fair, reasonable figure to use, based upon actual experience. The State of Minnesota used it in their report, and the State of Wisconsin (I am told) used it. And when the railway companies were called upon by the State of Minnesota to make an estimate, there was a meeting held in my office of the different railway officials who were charged with the duty of making the report for their various companies, and that question was discussed at that time, and we agreed that in the country and in the smaller towns and villages a multiple of 3 over what might be called the ornery value, the value for agricultural purposes, if it was country property, or value for town purposes, if it was town lots, was as near right as our experience could determine; that in the larger towns and cities that multiple would be too great, and that no fixed multiple could be used in the larger cities or towns; it must be left to the discretion of the officer making up the estimates, based on his knowledge of the legal situation in each case. I am sorry to say that my experience shows that the multiple of 3 is too low where you are going through a developed country. Where you are figuring on a country that is sparsely settled, sparsely developed, it is probably a little high. Taken as a whole on the line of the Northern Pacific I think it is too low.

Q. Why is it necessary to use any multiple at all, Mr. Cooper, why should you say that it would cost the Northern Pacific Railway Company more to acquire an acre of land than it would cost anyone else to acquire it for any other purpose?

A. Well, I can illustrate by an actual case, or cases, perhaps, better than any other way. We are about to build a line from Mandan south along the Missouri river. That right of way we are now purchasing; we commenced to purchase it last year. I hold here a contract secured by one of my right-of-way men from Robert Gwyther and his wife for a right-of-way across their lands. The area of that right-of-way is

58.43 acres. The consideration recited in the contract is $10,000. Accompanying the contract the right-of-way man made a report, which I will read. He says, "Right-of-way runs throuh center of farm, takes approximately half of the cultivated land; balance pasture, garden, shade and fruit trees and buildings. Following buildings have to be removed; log horse-barn, cattle-barn, machinery-shed, old house used as a granary, poultry-house, ice-house, root-house, storage house. Right-of-way also runs about thirty feet from a two-story frame dwelling-house, costing $5,000, which will probably be moved. Dwelling has hot water heating plant, bathroom, with hot and cold water and water closet. Water is piped into the house and barn from a well across the proposed railway track, and the water system will have to be entirely changed. This place is arranged with walks and curved driveways, lawns and shade trees, and the railway interferes with and practically spoils the whole plan of a fine country residence and farm." Well, $10,000 is a lot of money even for the Northern Pacific. I expected to make a trip down into that country, and I concluded I would let that case wait until I went down there and looked at it—which I did. It happened that President Elliott was along with me. We stopped there and looked the whole place over, and at the end we concluded to pay the $10,000. The land was probably worth $30 an acre. That would be a good, fair, generous price for it. So that all of the rest of that was made up, you can see, of the elements that I have read to you from the right-of-way agent's report. We were coming in there and come pretty near spoiling this man's place, or seriously damaging it. The question, of course, that confronts a railway company in this and all other cases, is what he will get on condemnation; that is the thing that you have got to make up your mind and guess at in the best way you can in determining whether you will pay the price that the owner asks. In this case we concluded that the demand, or the price, as it would properly be called, of the owner, was not unreasonable, that we could not do better on condemnation, and we paid it. Now, then, the multiple of 3 on the agricultural value in this case, you see, would have been entirely too low; but it illustrates what this multiple is for. This was probably, in fact I am free to say this was somewhat of an extreme case; otherwise, the multiple of 3 would have to be raised away up, because the fair value of those 58 acres of land at $30 would have been about $1800.

Now, we paid him six times that. That is a sample case, which illustrates what this multiple is used for. It is to cover the severance damage, the damage done to improvements, that must be taken into account somewhere.

Q. And the value of the property itself?

A. And the value of the property itself, and the enhanced value that a railway company has to pay for property. There is an important item that must be always taken into consideration when you are figuring that the value of a piece of farm land is $25 an acre; that does not mean that the railway company can buy a right of way through it, even if there was no severance damage or any other damage, for $25 an acre.

Q. Why not?

A. Well, the fact that a railway company wants it gives it an additional value; it is a new use to which the property can be put.

Q. And you have to have it, I suppose?

A. And the railway company has to have it. I suppose that is the scientific way to put it. The real reason is that the opportunity is afforded the average citizen to get square with the railway company for some fancied grievance, or no grievance at all—maybe just human selfishness—and he never misses the opportunity. So we don't expect to buy a right of way at its fair value. If we did, we would get woefully disappointed every time. We expect to pay very generous prices, and have to pay them.

Mr. Teal: Your remarks with reference to the treatment of railway companies by individuals do not apply, I suppose, merely to individuals? Would they apply, for instance, to another railroad company? Take, for illustration, your treatment down the North Bank river. Did the Harriman people treat you with generosity going down there?

The Witness: No. They treated us with a club. But we have no harsh feelings on the outcome of the North Bank at all, you know. We have a line there now, you know.

Mr. Teal: Indeed, you have, thank God.

Q. Now, you don't have to purchase at the owner's price; you can go into court and condemn. What is your experience, as a rule, when you resort to that method of acquiring title?

A. Not very comforting, I assure you. I have a condemnation case illustration. I am free to admit it was an extreme one. They are not all as bad as this, thank God! This was

the case of Mrs. Bandman, the widow of Daniel Bandman, who in my boyhood days was quite a tragedian. Mrs. Bandman has a place out near Missoula, a very nice place, within four miles of the town of Missoula. We decided to make a line change, which forced us to purchase a right-of-way across this place. The Milwaukee Company, in building its new line, placed itself immediately alongside of us; so that the two railroad companies started to purchase a right-of-way side by side. We started negotiations with Mrs. Bandman for the 36 acres which we required, and she wanted twenty-five thousand dollars. I offered her seven, and she came down to twelve thousand five hundred and "stood pat," as I also did on my seven thousand. It was evident then that we were going to have a condemnation, and I had the property gone over with the utmost care by two of my land examiners, men experienced in land examination work, and they made a map on a very large scale of the whole place, the total area of which was 301 acres. They showed all of the improvements, and valued everything on the place—the trees and the buildings and the land itself—under my instructions—valued it just as high as they thought it could possibly stand. They put the value of the whole place at $22,000, and the value of the right-of-way and the damage that we did to her at $3,600. We went into court and started condemnation proceedings. In Montana the proceedings are held there first before a commission appointed by the court. The commission gave her $12,355. The Milwaukee was conducting its proceedings at the same time, they requiring 25 acres, and the commission gave her against the Milwaukee $9,000. She got from the two railway companies $21,335 for 61 acres of her place; that is to say, we practically paid for the whole place, if the judgment of my men was right as to its value, and she still has a pretty substantial place left yet. We considered them, "Shall we appeal?" In Montana we can appeal to a jury. I took that question up with our division counsel who had handled the case, and I remember his reply very well. He said he thought we had better settle; that every tear she shed before the commission (and she shed a good many of them) cost us $500, and he was afraid to go before a jury with that same condition of affairs. I didn't know where we would wind up. Now that is an illustration of what happens to a railway company when you run against a widow—although she is a very charming widow and a very clever woman. I have no doubt—it is all over now and passed—I have no doubt we

paid three or four times what that property was worth—honestly and fairly worth. And that is our experience generally with condemnations. We don't know where are are going to land. We sometimes strike a fair jury, but we never get the best of anyone. We always pay them generously what their property is worth. I never heard of a jury giving a man less than his property was worth, acknowledged by those who were entirely disinterested. So that it really is a question whether you will pay once, two, or three, or four times the value of a man's property when you go into a condemnation.

Q. Have you prepared a statement, Mr. Cooper, showing what you have actually paid for right-of-way purchased and used by the Northern Pacific in the years 1905, 1906, 1907, 1908, and 1909 for line changes and new lines?

A. I have.

Paper marked Complainant's Exhibit 3 (Cooper).

COMPLAINANT'S EXHIBIT 3 (COOPER).

STATEMENT SHOWING ACTUAL COST OF RIGHT OF WAY PURCHASED IN YEARS 1905, 1906, 1907, 1908 AND 1909 FOR LINE CHANGES AND NEW LINES AS DESCRIBED.

	Acres R/W Purchased.	Miles R/W Purchased.	Total Cost.	Cost per Acre.	Cost per Mile.
Wadena to Glyndon Line Change	620.089	23.320	$178,491.87	$287.85	$7,654.02
G. H. & C. Riv. Ry., Kelso to Cosmopolis	801.630	51.974	156,632.43	195.38	3,013.69
Big Fork & International Falls Ry.	542.000	32.500	48,475.47	89.44	149.15
Missouri River Ry., Mandan South	569.010	68.930	50,861.10	89.37	73.78
Cul de Sac to Grangeville	662.110	46.650	100,084.25	151.16	2,145.43
Alta to Berea, N. D., Line Change	466.900	8.370	44,413.87	95.13	5,306.32
Garrison to Missoula Line Change	883.289	15.000	184,876.98	209.31	12,325.13
Vancouver to Kalama Line Change	298.198	9.000	72,052.58	241.61	8,005.84
Belknap to Tuscor Line Change	398.460	14.096	37,486.80	94.08	2,659.32
Paradise to St. Regis New Line	461.760	20.253	19,215.55	41.61	948.82
Tacoma to Tenino New Line	834.270	28.063	1,351,639.14	1,620.15	48,169.60
Livingston to Muir Line Change	166.930	8.794	11,156.75	66.83	1,268.68
New Line Spokane to Portland (excluding Spokane, Pasco, Vancouver and Portland Terminals)	7,996.940	305.181	1,980,102.88	247.62	6,488.29
Totals	14,701.586	632.131	$4,235,489.67	$288.09	$6,700.34

Q. That statement represents right-of-way actually purchased by you during the years named?

A. That is correct.

Q. And now in use or in prospective use by the Railway Company, or is it all being used at this time?

A. No; the first item, Wadena to Glyndon, that is our line change up here in Minnesota; that is partly in use. The next item, Kelso to Cosmopolis; that line has not been constructed. We are not purchasing the right-of-way, and the figures shown represent what we have actually acquired, and its actual cost. The Big Fork & International Falls Railway; that is actually in operation. The Missouri River Railway, from Mandan south; that is the new line that I spoke about a few minutes ago, for which we have just let the contract to construct. It will be commenced within a few days. Cul de Sac to Grangeville, the next item, is in operation. The next item, Alta to Berea; that is the line change around Valley City, and is in operation. Garrison to Missoula: that is a line change; that work is to be completed. My friend Mrs. Bandman, of whom I spoke, appears in that item there. Vancouver to Kalama: that is a line change work that is in progress now. Belknap to Tuscor; that is another line change; that is to be completed. Paradise to St. Regis: that is a new line now in operation. Tacoma to Tenino; that is a new line on which construction has not been commenced. Livingston to Muir: line change; that is in operation.

Q. The next one represents the new line Spokane to Portland.

A. The next one is the S. P. & S. line which is in operation from Kenewick to Portland, and not completed yet from Spokane to Pasco.

Q. Now, how do the prices actually paid by you for this right-of-way, as shown on Exhibit 3, compare with the estimated cost of acquiring the right-of-way of the Northern Pacific as shown in your Exhibit No. 2? Just indicate some comparisons.

A. The average of the estimate, Exhibit 2, of the item "Right-of-Way and Station Grounds," which does not include any terminals, is $195.57 per acre; that is to say, that is my estimate of the cost of reproducing the right-of-way and station grounds on the whole system, as shown on Exhibit 2, excluding the terminals. That compares with this new Exhibit 3 in which the average is shown of $288.09 per acre, there being no terminals included in this exhibit also; that is

to say, the comparison is a fair one because terminals are excluded in both cases.

Q. And the price actually paid for the right-of-way as shown in Exhibit 3 is about $93 per acre more than the estimated cost of acquiring this right-of-way as shown in the Exhibit No. 2?

A. That is correct. And it will be noted that Exhibit 3 covers 632 miles of right-of-way, which is a very substantial quantity.

Q. And covers right-of-way in practically every state on the system, doesn't it, with the exception of Wisconsin?

A. Every state excepting Wisconsin. Now you take the first item, Wadena to Glyndon; it shows an average of $287.85 per acre, actual cost of the 23 miles of right-of-way which we purchased there for the line change. That compares with the item appearing on Exhibit 2, Minnesota, Staples to Moorhead, in which the average there is given as $219.95; that is to say, the old line between Wadena and Glyndon is included in the item Staples to Moorhead on Exhibit 2. The new line appears only on Exhibit 3. The two lines are not to exceed at any point a mile and a half apart, running through practically the same character of country, no appreciable difference in the value of the lands between the old and the new lines, and the new line runs through two villages only, to-wit: Hawley and Lake Park. So that the comparison as between the two is perfectly fair, and I feel that it could very properly and conscientiously have increased that item as it appears on Exhibit 2; that is to say, the item Staples to Moorhead. In view of our experience in buying this new right-of-way I feel that my estimate between Staples and Moorhead is too low.

Q. Now, before we pass that point, Mr. Cooper: you spoke of having added 25 per cent. to the appraised value of the terminal property in the Twin Cities here; instead of using the multiplier of 3, you used the multiplier of one-fourth. Was that additional 25 per cent. or that multiplier of one-fourth used for the same reason that constrained you to multiply the actual value of the property for agricultural purposes in the outside country districts by 3?

A. No; in the larger cities, and in fact in the towns, you have no severance damage as a rule. You purchase an entire lot or an entire block. You are not cutting a man's property in two. I am speaking now of the rule. Sometimes, if you cannot agree with him, you condemn only the small part of the lot that you actually need. But as a rule when you are pur-

chasing terminal property you purchase the entire lot. Therefore the severance damage can be eliminated in property of that character; and the multiple that you use for property of that kind, which in the case of St. Paul and Minneapolis is by adding 25 per cent, is to cover principally the improvements that would be on that property if you had to go out and purchase it. That is to say, if it was not in use for a railroad it would be in use for some other purpose. There would be business blocks on it; there would be industries of various kinds, perhaps; there might be a gas works on it, all of which, in buying the real estate, you have to pay for. So that in estimating the cost of reproduction you necessarily must include something to cover the improvements that you would have to pay for if you were buying the property.

Q. Do you encounter these same difficulties in the way of prices going up as soon as it is learned that a railroad company is endeavoring to obtain it, that you do in buying property in the country districts?

A. Yes. I don't think there is much difference between buying in the city and in the country in that respect. They catch on pretty quick in both cases. An illustration of what we are talking about is afforded by the property that we have been purchasing for three years right here in St. Paul. It is the property that lies between Commercial street and the St. Paul & Duluth freight yard. We started in to buy that property some three years ago, to make a passenger terminal out of it. We had plenty of time, so that we could purchase it to the best advantage. I had a St. Paul real estate man buy the property for us, and he kept under cover for quite a long time. His selection was fortunate in some respects and unfortunate in others. Nobody ever dreamed we would have selected him to buy the property, and that was our salvation for quite a while. He started in buying that property, and the first purchase we made we paid ten cents—to be exact 10.8 cents per square foot. It went on then for quite a while between 10 cents and 20 cents. We made a total of 18 purchases. The eighth purchase we made cost us 30 cents, and it kept on going up until the last purchase we made—and in the meantime we had been discovered. We kept under concealment for about two years. A smart old Irishman who lives over there, who had some of that property, commenced to smell a rat, and he came over to see me one day, and I had to admit that it was so. He wouldn't deal with the real estate man—it was hopeless—so I had to deal with him myself. The last purchase we made was on

December 1, 1908, and it cost us $5.38 cents a square foot. That, however, included quite a large building, what is known as the Robinson & Cary warehouse. But that illustrates just what we are getting at; that is to say, in buying a large amount of property like this, you will find some of it on the market that you can purchase at a reasonable value; you will find some of it that is not on the market, the owners don't care to sell, but you are probably able to tempt them by some story about needing it for a warehouse. I don't know what kind of stories my man told them, but at all events he kept it concealed for quite a little while that it was a railroad and coaxed them to sell. Pretty soon there was so much buying going on there that they commenced to suspect something. Naturally they would figure out that it was a railroad—didn't know what railroad company, but some railroad company wanted it. Then it commenced to go up at alarming rates. We finally bought it all excepting the Robinson & Cary warehouse, a piece of improved property belonging to the Standard Oil Company which we have not yet purchased, and the Pinch Gas Company which we have not yet purchased. When we get through purchasing all of that property, including these two pieces of improved property which we yet have to purchase, that chunk of property which started at 10 cents a square foot will probably average us $3. I don't know how much we will have to pay the Standard Oil Company. We think it will cost $150,000 to move them. They have said to us that if we will give them an equally good location and pay them the expense of moving their plant they will make a deal with us on that basis. But it illustrates the necessity for adding something on to the market value of the naked real estate when you come to deal with a proposition of this kind.

Q. Now turning to your statement Exhibit 2, the first sheet of the detailed sttaement covering the State of Minnesota, you find at the bottom or towards the bottom of that sheet, the item "Minnesota & International Ry. (70 per cent.)," total value $95,000. What does that represent?

A. The Northern Pacific owns 70 per cent. of the capital stock of the Minnesota & International Railway. That item represents 70 per cent. of the acreage and 70 per cent. of its value; in other words, it represents exactly the Northern Pacific's interest in that piece of railroad—the real estate part of it.

Q. And the same explanation applies to the Big Fork and International Falls Railway?

A. That is right. The Northern Pacific in that case owns all of the stock.

Q. And both of those railroads are used in connection with the Northern Pacific system?

A. Oh, yes.

Q. As a part of its railroad system?

A. Yes, sir.

Q. Now, in the detailed statement covering the State of North Dakota, you have at the bottom of that sheet "Joint property at Oakes" and "Joint property at Linton," the first being property owned in connection with the Chicago & North-Western and the property at Linton being owned in connection with the Chicago, Milwaukee & St. Paul. Those, I apprehend, are station grounds or right-of-way used?

A. Station grounds that the two companies purchased and use in common, each owning a half interest.

Q. Now, this Exhibit No. 2 and the Exhibit No. 3 were prepared by a number of individuals, I suppose, and from the records of your office down at the Northern Pacific building in this city?

A. I have used a number of my men to help me in making them up. Is that what you mean?

Q. And of course the records of that company were consulted in determining the acreage?

A. Oh, yes. We took our maps and compared the areas from our right-of-way maps. In Exhibit No. 3, the total cost item, which is the important item in that, is taken right from the Auditor's books.

Q. All of those records and all that were used in the preparation of this statement, and all of the individuals who had any part in its preparation, are available here in St. Paul, and you are willing to have them produced here for the purpose of examination, if necessary, I understand?

A. Yes, sir.

Q. This statement Exhibit No. 2 you state represents what it would cost to acquire or to reproduce this real property as of the present date. Can you state what it would have cost or how much less would have been the cost of reproducing the property or real property used in connection with the Northern Pacific Railway as of the date of November 1st, 1907? You need not be absolutely accurate, but how more is the present cost of reproducing that property, or how much does the present cost of reproducing that property exceed what it would have cost as of that date?

A. There are the new properties acquired since that date

to be deducted, and that is about all. I do not consider that there is any substantial difference in the cost of acquiring the property between the two dates. Values have gone up some here in St. Paul and Minneapolis. They are about a standstill in Tacoma and about a standstill in Seattle, and have been for a couple of years. In Spokane there is considerable activity now. Oh, I should say, in round figures, a million dollars.

Q. So that at all times since November 1, 1907, the physical real property of the Northern Pacific Railway Company used in connection with the operation of its railway, would have cost within at least a million dollars of the figures shown in your Exhibit No. 2?

A. That is my best judgment.

Q. I find the last sheet in this Exhibit No. 2 is a map. That shows the present lines and the projected lines of the Northern Pacific Railway, does it?

A. That is correct.

Q. The projected lines being dotted lines and the lines actually in use the solid lines. By the word "projected," I presume you mean lines which you contemplate building?

A. And are buying right-of-way for; that is really what they show. We have commenced buying right-of-way on all of the dotted red lines on the map.

Q. The solid lines are the lines actually in use?

A. That is correct.

Q. In the sheet just next before that map, you represent the lines under construction, showing a total acreage of 3,902 acres, and a value or cost of $1,614,000, and you also represent the Winnipeg Terminal under construction, having a cost (estimated) of $1,142,500. Are those two items included in the total which you have summarized on the first page of the statement?

A. No, sir.

Q. The $114,693,000 is independent of those?

A. Entirely so. They are not included in the summarized statement.

Q. No portion of our right-of-way in the Spokane, Portland & Seattle Railway is included in this statement, as I understand it?

A. None whatever.

Q. It represents simply the property used by the Northern Pacific in connection with the operation of its road?

A. That is correct.

Q. How does the total value as shown in this statement

compare with the total value as shown in your estimate put in evidence in the Spokane Rate Case and your later evidence or estimate put in evidence in the Minnesota Rate Case?

A. My total in the Spokane Rate Case was $107,149,891.26; in the Minnesota Rate Case $108,034,852.08.

Q. How do you account for the excess of your present estimate over the figures as shown in those two cases?

A. There is the new property purchased, as I have already spoken of it, and there is an increase in St. Paul and Minneapolis from—

Q. You need not give details, Mr. Cooper; just in a general way. I want to have the discrepancy accounted for.

A. From 14 and a half million dollars in the Spokane Rate Case in these two cities, 15 million in the Minnesota Rate Case in these two cities, the increase between these two figuhes being new property acquired, to $17,600,000 in this present case.

Q. That is, the estimated cost of the terminal property in the Twin Cities is about two and a half millions more than it was estimated in the testimony in the previous case?

A. Yes. A part of that increase is new property, but the bulk of it, perhaps two million dollars of the increase, is accounted for in this way: As I have already explained, in making up our valuation for the State of Minnesota, we employed three local real estate dealers of St. Paul to make the appraisal—Messrs. Taylor, Watson and Reed. When their appraisal was turned in to me I thought it was too high and I reduced it. During the time that had elapsed since I have become firmly convinced that I made a mistake in reducing their valuation, and that my figures (after reducing their figures) were entirely too low. I reached that conclusion not hurriedly at all, but I have been watching the values of real estate here in St. Paul, have seen how they have been going, and I know a great deal more about the matter than I did at that time when I reduced their appraisal. I testified in the Minnesota Rate Case that I had made a mistake in reducing their figures. When I had the opportunity now, in this case, to make a new valuation, I concluded to rectify the mistake and use their figures exactly as they made them, adding, as I have explained, the 25 per cent. That accounts for the difference in St. Paul and Minneapolis. I have made other changes as the result of the appraisals that I have had made; where I found that my figures used in these previous estimates were too low, I have increased them.

Q. Were you lower than those subsequently made by the appraisers?

A. Yes; that is to say, my present estimate is based on the appraisals I have had made since I gave my testimony in those other cases, and in no case have I increased the figures used by me in the Spokane and Minnesota rate cases excepting where there has been an appraisal made or excepting where we have bought new property, in which cases we have had the actual cost.

Mr. Donnelly: Now, Mr. Teal, subject, of course, to the objections which you made at the outset, we offer these three exhibits (Complainant's Exs. 1, 2 and 3) in evidence.

The Master: They will be received subject to the objection.

Q. Mr. Holden suggests it should be made perfectly clear by your testimony that these figures represent simply the naked real estate, that is, the cost of acquiring the naked real estate; that they have nothing to do with the constructed railroad upon it or the cost of grading the road, or anything of that kind. That is correct, is it?

A. That is entirely correct.

Mr. Teal: Not the station houses or buildings?

Mr. Donnelly: Oh, no; no improvements.

The Witness: The naked real estate only; no improvements of any kind on it.

Mr. Teal: All right; I just wanted to understand that.

Mr. Donnelly: That is all.

Cross-Examination by Mr. Teal.

Q. Mr. Cooper, you have been connected with the Northern Pacific for a long time, in connection with the Land Department, have you not?

A. Yes, sir.

Q. Can you g[illegible] the exact figures as to what the right-of-way of the Northern Pacific Railway Company has actually cost? ?

A. No, sir; we never attempted to figure that in any way. In any of these various cases we have never been asked, and I don't know if we could figure it.

Q. As a matter of fact, a great part of the Northern Pacific railway is built over lands granted by the United States, is it not?

A. That is correct. Under the charter of July 2, 1864, we were granted a right of way 400 feet wide across all the pub-

lic lands, with a main line from Ashland to Puget Sound, and for the branch down to Portland.

Q. In keeping the books of the company have you entered the items where you have purchased lands for this purpose?

A. No, sir; except we could, of course, tell what purchases we have made for right-of-way, oh, I presume, as far back as the reorganization. Beyond that I should think it doubtful if we could ever tell just what those rights-of-way cost. You understand that the Northern Pacific system as it exists today is made up of a whole lot of different railroads, acquired at different times and in different ways, some by downright purchase of a railroad completed and some through subsidiary companies, of which the records and books were kept outside of the Northern Pacific offices; and I should doubt if any intelligent statement could be made. By "intelligent," I mean sufficiently complete to be of any value.

Q. Could you state how much of your right-of-way that you are using today is on granted lands, which you did not pay for at all?

A. I made up a statement at the request of Commissioner Prouty, I think it was—it may have been the attorneys on the other side, but I think Commissioner Prouty called for it in the Spokane rate case, the heading of which indicates its character, and which may answer your purpose: "Statement showing total area and valuation of right-of-way and terminal grounds Northern Pacific Railway Company, subdivided to show area purchased and valuation thereof, and the area donated and the valuation thereof." That does not show the cost. It was a subdivision of the valuation that I was testifying to in this case.

Q. May I glance at that just a moment?

A. Yes. You will see there is a saving clause in the certificate there. I think it is substantially correct.

Q. This was made up April 9, 1907, as indicated by the mark here, Mr. Cooper?

A. Yes, sir.

Q. And this shows, as well as you could show it at that time the area purchased and the valuation thereof, and the area donated and the valuation thereof?

A. That is correct.

Q. I would like to have this appear in the record. This includes both right-of-way and terminal grounds of the Northern Pacific Railway Company?

A. Yes, sir.

Q. And the total area at that time was 156,823.32 acres?
Mr. Holden: What is the date of that?
Mr. Teal: April 9, 1907.
A. That is correct.
Q. And the valuation thereof, as estimated at that time, was $106,890,087.84?
A. That is correct.
Q. The area purchased, of this amount, was 54,305.77 acres?
A. That is correct.
Q. Which was valued at $71,325,213.32?
A. That is correct.
Q. And the area donated was 102,517.55 acres, valued at $35,564,874.52?
A. That is correct.
Q. And that statement was prepared under your direction, Mr. Cooper?
A. Yes, sir.
Q. And represented as nearly as you could what it purports to represent at that time?
A. That is right.
Q. Now, Mr. Cooper, in Spokane, Washington, I notice in this list that the valuation of the terminal properties is, in round numbers, $8,109,000?
A. Yes, sir.
Q. Is it a fact that the greater portion of those properties was in the land grant?
A. That is a fact; that is to say, either the land grant or the right-of-way grant. The two together covered practically all of that. We have purchased small tracts, but I should say that of that total $8,000,000 is the land grant and the right-of-way grant.
Q. And in order to arrive at this valuation, you employ qualified people to appraise it upon the basis as though someone had to purchase the land?
A. That is correct.
Q. Then add 25 per cent. Now, take it at Tacoma, where the valuation of the terminals is $11,525,000, in round numbers; what percentage of that was covered either by land grant, right-of-way or donation?
A. A very little of our Tacoma property came from either of those sources. We had our right-of-way through the town—
Q. What about water front there, Mr. Cooper?
A. (Continuing)—we had our right-of-way through the town, but I don't remember that any of it came through the

land grant. The bulk of the company's property in Tacoma came through the Tacoma Land Company. That was a company that was formed in the early days when it was decided to make Tacoma the terminus, which acquired all of the property in the vicinity of Tacoma, and in which the Northern Pacific, I believe, owned all of the stock first; afterwards its holdings were reduced to 49 per cent., and the remainder was owned by some of its directors. Then the Land Company went into the hands of a receiver; it was reorganized, and the Northern Pacific took some stock in the new company and put in some new money to put the company on its feet (still a minority interest, however), and then it extinguished its minority interest, surrendering its stock in exchange for land. Then it had to purchase from the State of Washington a large part of its holdings, as tide lands. I should say that two-thirds of its property in value, as it owns it today, was acquired by the Northern Pacific since the reorganization in 1896, either by surrendering its stock of the Tacoma Land Company and taking land in exchange or by purchase from the State of Washington or from individuals.

Q. How much would you estimate the actual purchase price would be of that two-thirds, Mr. Cooper, irrespective of this valuation?

A. I could not say without looking up the figures.

Q. Would it be convenient for you to look up those so you could testify as to that tomorrow morning, without any particular trouble? I mean without too much trouble.

A. It is only a question of my being able to find them rapidly. I shall try. It is getting so old that a lot of it is escaping my memory, and I am not sure just how easy I am going to find the records, but I shall make the effort.

Q. All right, Mr. Cooper. Now, this Tacoma Land Company, Mr. Cooper, as I remember, was originally formed, and the Northern Pacific owned all of the stock at that time, and they, knowing that Tacoma was going to be the terminus, acquired all that land around Tacoma there very cheaply, didn't they, for the new town, when they bought it?

A. Of course that is getting back of my time.

Q. I thought you were there then?

A. Oh, no. That is getting back to 1874, and I only came into railroad existence in 1882.

Q. Were you there when Mr. Schulze was there?

A. Yes, I succeeded Mr. Schulze.

Q. That is what I thought.

A. Undoubtedly they acquired that property cheap. It is safe enough for me to answer it that way.

Q. And at that time the company got quite a bit of its holdings for railroad purposes, didn't it?

A. Yes. I don't know the nature of the deal, but there was a transfer from the Tacoma Land Company to the Northern Pacific of a considerable proportion of the property which the Northern Pacific now owns lying west of the city waterway.

Q. But it is perfectly safe to say, is it not, Mr. Cooper, that as representing actual cost of the Northern Pacific, this $11,500,000 is largely in excess of what it cost?

A. Oh, yes, indeed. I doubt if that property cost over a million dollars.

Q. Now take Seattle. The terminals there are valued at $26,184,000. Is that on present Seattle values, on what (say) the Washington & Oregon paid for their property?

A. We made that appraisal, Mr. Teal, in the end of February or the beginning of March, 1907. If it was being made today I doubt if there would be any substantial difference. I do not think there has been any increase or decrease. I think that property has about stood still since.

Q. That $26,000,000 also represents very largely in excess of what it cost the company in Seattle, does it not?

A. Oh, yes.

Q. And that only purports to show, as well as could be shown, what it might cost to duplicate that today, under the circumstances?

A. That is right. Of course some of that property in Seattle, as well as in Tacoma, has been owned by the company a great many years, bought when values were low.

Q. Isn't that also true—that is, that general statement—as to a great many of these terminals, even here in St. Paul? Have not some of the terminals here been owned ever since the Northern Pacific was first organized?

A. Yes; it is true to a lesser extent, however, in St. Paul and Minneapolis and Duluth than in Seattle and Tacoma. In other words, the properties cost considerable more in proportion to their present value in these three eastern cities, eastern terminals, than they did in the two western terminals.

Q. Take North Yakima. You remember when the town was moved up from Old Yakima to North Yakima, don't you?

A. Yes, sir.

Q. And you remember how North Yakima was laid out. That was laid out on railroad land, wasn't it?

A. Partly railroad and partly private land. They joined together, the railroad company and the owner of the private land, and conveyed to a trustee who platted for the two of them.

Q. And when it was platted, the railway terminals were laid out there at that time, were they not, generally speaking?

A. Yes. Of course we had our right-of-way there independent of our land-grant ownership; and then also, in platting the townsite, the right-of-way was widened out.

Q. And that now, generally speaking, represents this item of $1,275,000?

A. That is right.

Q. So that going through these values of these terminals, the values, if they were really reduced to the original cost, the actual cost, that item would be very largely reduced, would it not, Mr. Cooper?

A. Very decidedly.

Q. And of course the same remark would be true as to the right-of-way if no valuation was placed upon that which was in the right-of-way or in the land grant, either one? I mean that would also reduce that value?

A. Yes; but of course the country right-of-way, as you might call it, cost nearer the value I have placed on it today than the terminal properties.

Q. Yes; I think that is correct too. Now, upon the question of the right-of-way and station grounds: does that include, Mr. Cooper, the old right-of-way and the relocations, or does this valuation include only places where the rails are laid today or to be laid for actual operation?

A. That is correct. For instance, take this Minnesota line change; we have built 23 miles of new line. Under the valuation I have there is the 23 miles of old. It so happens that with that line we have not quite abandoned the old and taken up the new; so, as to avoid duplication, I had to elect to take one or the other, and I took the old as I reported it to the State.

Q. So we can rely upon the fact that there are no duplications?

A. There are no duplications, no, sir.

Q. At what date was this valuation fixed by you for the Minnesota Commission, to which you refer, of $108,000,000—this year or last year?

A. The Minnesota rate case?

Q. Yes.

Mr. Donnelly: It was in 1908, you testified.
A. I tried to find the date, and I couldn't find it.
Mr. Donnelly: It was in 1908, last year, you testified.
The Witness: Oh, it was last year—1908.
Q. In the Spokane case you testified in 1906, didn't you?
Mr. Donnelly: No, March, 1907.
A. March, 1907.
Q. Now, for instance (it might throw a little light on it), you remember the Spokane & Palouse, from Spokane south?
A. Yes.
Q. You remember that Mr. George W. Hunt built that originally, don't you?
A. Not the Spokane & Palouse, no. That was Paul Moore and A. M. Cannon of Spokane. George Hunt built the Washington & Columbia River.
Q. Yes, I know that. Now, in appraising your rights-of-way through that section of the country, they have been appraised upon the basis of the valuation of the lands through the Palouse country and all around there, and then multiplied by three times as of today, as nearly as you could?
A. That is right.
Q. In the Minnesota case, the State Commission here have also had the lands and railroad properties of the Northern Pacific Railroad Company valued, have they not, or appraised?
A. A valuation has been made by their engineer.
Q. Do you remember how nearly that approaches yours, whether yours is less or more than theirs in Minnesota?
A. Yes.
Q. On the same basis?
A. I had better read all these figures in.
Q. Yes, I think you had better, if you will, Mr. Cooper.
A. I am reading now from a statement that was put in as an exhibit to my testimony in the Minnesota rate case. It reads: "Comparison of value of Northern Pacific Railway Company's right-of-way and terminal property in Minnesota as reported by the engineer of the Railroad & Warehouse Commission and as testified to by Thomas Cooper in the Minnesota rate case. The company reported the value of its property in the state (meaning by "property" real estate) as $23,487,220.41."
Q. Pardon me, but does that represent the same property in Minnesota that appears in these exhibits?
A. Yes, excepting that the exhibits include some additional purchases since. "The state engineer reported the value of precisely the same property as $15,385,078.47." My testimony

in the Minnesota rate case gave the value of the same property, plus some additional properties purchased since the report was made up, as $25,300,836.91. That gives you these three figures.

Q. Yes, and gives it in a very good way too.

Mr. Donnelly: Mr. Teal, you asked Mr. Cooper to get some information about Tacoma. Do you still want that? I didn't know but what a subsequent answer of his had sufficiently given it, and it is evident that it is going to involve ransacking our whole records.

Mr. Teal: I think you need not bother about that.

The Witness: I tried to placate you with that answer there.

Mr. Donnelly: So it is not necessary to get that?

Mr. Teal: No, just let that go.

An adjournment was then taken until the morning of Wednesday, April 14, 1909, at 10 o'clock, at the same place.

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326 Federal Building, St. Paul, Minn.,
April 14, 1909, 10 A. M.

The hearing was resumed before the Special Master, Hon. Frederick N. Dickson, at the above time and place.

Present:

On behalf of the Complainants, Mr. Hale Holden, Mr. Charles Donnelly, Mr. F. C. Dillard.

On behalf of the Defendant, Mr. Luther M. Walter, Mr. W. A. Wimbish, Mr. J. N. Teal.

THOMAS COOPER recalled, and his cross-examination resumed, by Mr. Teal:

Q. Mr. Cooper, in connection with these various terminals, taking for instance Seattle as illustrative: from the table furnished it appears that there is a trifle over 432 acres appraised as terminal property. Is all of that property in use by the railroad?

A. No, sir. There is some of that property at Smith's Cove, I couldn't say offhand what the acreage is—quite a large piece of ground up there—that was purchased by the Seattle, Lake Shore & Eastern, which afterwards became the Seattle & International, and is now a part of the Northern Pacific system. That piece of property was acquired and has been held ever since, for the purpose of making an outside yard in which to

handle the Seattle business. It is the first piece of level ground outside of what you might call the business part of the city of Seattle, to the north, that is available for that purpose; also being on water front there, it is intended—contemplated—that it will also be used for docks and elevators and coal bunkers and other like purposes required for trans-shipment from rail to water. That piece of ground we have been importuned repeatedly to sell, but knowing that we would sooner or later require it ourselves, we have refused to do so; so that that piece of ground is not actually today in use, excepting that our railroad crosses it.

Q. Then, other than as for crossing purposes, at the present time that particular piece is not in use?

A. That particular piece is not in use.

Q. Can you give the court some idea of the size of that piece of land?

A. (Referring to papers and maps.) With the proviso that this is only an estimate, there is about 4,000,000 square feet not in use carried in this estimate at a rate of 50 cents per square foot valuation, which would produce $2,000,000 of the $26,000,000 in this valuation. I think that that is a reasonably close figure.

Q. That property is at Smith's Cove, didn't you say, Mr. Cooper?

A. Yes, sir.

Q. That is about 100 acres, isn't it? A hundred acres would be 4,000,356 square feet. It is a little less than a hundred acres. Now, then, that leaves 332 acres left in the Seattle terminals. Are all of those 332 acres in railroad use?

A. Practically so. We have a large terminal yard there between Occidental and Oriental Avenues and extending from King Street on the north to the Canal water-way on the south. That terminal is not fully developed. We haven't laid all of the tracks; we haven't filed all of it. That work is now going on from day to day.

Q. Pardon me. Part of that is tide lands, is it not?

A. It is all tide land.

Q. And you are filling that in as you go along, aren't you?

A. Yes, sir.

Q. It is not all filled now, is it, Mr. Cooper?

A. It is not all filled now. It is being filled, and we put down additional tracks from time to time as our business requires it. In fact, the last time that I was in Seattle with the president he then authorized some additional tracks being laid on this tract of land we were speaking of, to meet the require-

ments of business. But just exactly how much of that piece of ground is actually covered with tracks I could not say now.

Q. Well, that could be ascertained reasonably readily, could it not, Mr. Cooper, how many tracks you have in your terminals in Seattle and how much unfilled land you have and how much filled?

A. It could be ascertained, yes; but I don't mean by that, Mr. Teal, that it could be ascertained in a day or two. We probably would have to get information from out there about it. I should doubt if our engineering records at St. Paul are sufficiently up to date to show exactly that situation.

Mr. Teal: I would like to make the request that this information be furnished respecting Seattle: that of the terminal yards at Seattle how much of them is in actual use, how much is not in actual use, what they were valued at in this appraisement.

Mr. Holden: What do you mean by "actual use"—that it actually has a track on it?

Mr. Teal: Not necessarily. I think it is plain. I will make myself plain. It is a fact—and without any criticism of it—that all railroads purchase when they can, and as they can, grounds for terminals for future use and for future development, at least any well conducted railway that I ever saw does it where they have the opportunity. And in the case of the Northern Pacific, I think I may say (not being a witness) that I know that to be the fact, and I certainly do not think that property like Smith's Cove, for instance, or like other property that I think I will show later on, could possibly be used at the present time under any circumstances as a basis of value for fixing rates, in this present generation, and may not be used for thirty years. At any rate, that is the purpose.

Mr. Holden: I understand the purpose clearly, but I don't think you quite answer my question. What would you define as "actual use"? Of course, if you mean by the request you made to have the property defined upon which tracks stand today, that would present your idea.

Mr. Teal: Yes.

Mr. Holden: If that is it.

Mr. Teal: Yes; that would be sufficiently clear. I would even take today.

Mr. Donnelly: I suppose you would be willing to have included any property that is actually necessary to the operation of the Seattle terminal at this time, whether it had a track upon it or not?

Mr. Teal: Oh, yes. I don't want to confine myself—for instance you might have team tracks and have property that is absolutely necessary to get up to your tracks.

Mr. Holden: Of course, we could not quite agree with your narrow idea, with the narrow construction of the suggestion.

Mr. Teal: I don't want to be narrow about this. I think you probably understand, don't you, Mr. Cooper, what I mean? I mean the property that you would say is fairly being used for terminal purposes today, and in use.

The Witness: I should think perhaps the way to get at it would be to make a map that would show the property and what is on it.

Mr. Teal: Yes, that is right. And I would like to have the valuation that appears in this table show in that.

The Master: You mean the valuation of the used and the unused?

Mr. Teal: Yes.

Q. Now, Mr. Cooper, in Seattle, and in fact in all of these terminal valuations, where it might be considered a right-of-way running through a small town, and valued in that way, in all of the terminal properties it is valued as though it was city property, is it not?

A. Yes. The valuation is based on the value of adjoining property largely, or property of similar value for residence and business purposes.

Q. Yes; that is what I wanted understood. Now, in Seattle is any of this acreage here city property in lot and block form; I mean by that, laid out in lots and blocks?

A. Yes, sir. I think that without any exception that I can recall, all our property in Seattle is platted property.

Q. On any of that platted property are there any buildings not used for railroad purposes?

A. I don't recall any buildings in Seattle on any of our property that are not used for railroad purposes, excepting one tract in block 370, Seattle tide lands, that we have a few leases on. The lessees have doubtless put up buildings. That is the only exception that I can recall. But, I might explain here that this same question that Mr. Teal presents was brought up in the valuation made by the Railroad Commission of the state of Washington. That is to say, they made a valuation themselves of the railroad property in that state, and after their figures had been compiled the railroad companies were given an opportunity to criticise them, or comment on them; and I argued that same question before the Commission as to what should be included as the railroad property. I con-

ceded at that time that some property which the company owned on Western Avenue, Seattle—very valuable property, and which was purchased a number of years ago on which to establish a freight and passenger terminal, but that purpose was afterwards abandoned and the terminal was put further down on the tide flats—I conceded that that Western Avenue property should not be included in the railroad valuation, the railroad purpose having been abandoned, and that property is not included in this valuation of $26,000,000 which I have presented in this case. This other property, the Smith's Cove property, and all these other properties I pointed out to the Railroad Commission of Washington the purpose for which it was purchased, the purpose for which it was being held, and my judgment as to the necessity for its use by the Northern Pacific in the reasonably near future—within ten years I think was the date that I put it—that if the business of the Northern Pacific expanded and the country developed as we had every right to believe that it would, that all of that property would be necessary within that period of ten years for railroad use.

Q. In connection with certain of your properties in Seattle, they are leased for building purposes, are they not, and stores are situated on them?

A. No, sir. I think you have in mind, Mr. Teal, that Western Avenue property that I speak of. That is all cut out of this valuation.

Q. I was speaking of the Northern Pacific Railroad Company. It does own property in Seattle, which it leases for business purposes, does it not?

A. The only tract is that part of block 370. We own I think it is six lots in that block on Seattle tide lands, which is leased.

Q. Is that where the National Grocery Company is?

A. Oh, no; that is the Western Avenue property that I tell you we cut out.

Q. That is what I was getting at. I say that the Northern Pacific does own a considerable amount of property in Seattle which it does lease for business purposes, does it not?

A. Oh, yes; it owns that Western Avenue property; but that Western Avenue property is not included in my valuation.

Q. That I understand.

A. Oh, yes.

Q. I want to ask you to what account does the income go that is received from rents of property of that kind by the Northern Pacific?

A. I think under the new Interstate Commerce classification of accounts that rentals are credited to "Miscellaneous

Revenue." Now you are getting into the domain of the accounting department and I am not very sure of my ground.

Mr. Donnelly: The comptroller can probably tell you that.

Mr. Teal: Yes; I did not intend to go beyond it.

Q. I believe you said that practically all of your Seattle property was platted into lots and blocks and streets?

A. Yes, sir.

Q. Is the area included in the streets and alleys throughout this platted property included in this 432 acres?

A. Only where they have been vacated.

Q. Only where they have been vacated?

A. Or where we have a franchise which gives us the use of them, equivalent for our purpose to an ownership.

Q. Do you recall any vacation in Seattle that has been made at the request of the Northern Pacific for which the city received any compensation?

A. No, I do not. Take the large block of land which we call the terminal, between Occidental and Oriental, and in which the large value is in this $26,000,000; when we got our franchise there it was coupled with a number of conditions as to the construction of overhead bridges. In other words, we are required to carry the streets overhead, at our expense, across our terminal ground, which, of course, was equivalent to paying compensation to the city.

Q. Have any been constructed yet, of which you are aware?

A. I really don't know about that. I know that there is an agitation regularly coming up about commencing the construction of these bridges; and I think what has been in the way of their being constructed has been these new railroads coming in and getting themselves fixed—the Oregon & Washington, and the Chicago, Milwaukee & St. Paul—as the bridges would necessarily have to be carried over their tracks also.

Q. I understand. I wasn't criticizing. I just wanted to know if there were any bridges built.

A. No. I think that is the reason of the delay.

Q. Do you recall any compensation that you paid to the city for any franchises there?

A. No, sir.

Q. Then, could you state how much of this land that is included in this 432 acres was originally streets that were vacated, or streets upon which you had been given franchises, and the value of that portion?

A. No, sir; I have never attempted to figure that in any way.

Q. Quite a considerable amount, is it not, Mr. Cooper, or would be?

A. I really don't know, Mr. Teal. I have never figured it. I never thought of it at all in any way till you just sprung the question on me now; and I really couldn't say offhand just what that area is, or anything about it.

Q. That could be ascertained quite readily, could it not, Mr. Cooper?

A. Well. it could be ascertained, yes. Of course all of these things mean considerable work.

Q. I know; but this is an exceedingly important thing. We are dealing no wwith figures that are apparently being introduced for the purpose of furnishing a basis on which to charge rates all over this country, and it is quite important that the basis be understood, and I would like to have you do that, if you will.

Mr. Donnelly: Do what, Mr. Teal?

Mr. Teal: To calculate the amount of area that is in the terminals in Seattle that are the result of vacated streets or streets on which franchises have been granted, which have naturally resulted in their vacation, and what that particular acreage was valued at.

The Witness: Well, do you wish that I should include in that calculation the area of a street where we are obligated to build a bridge to carry the street up over it?

Mr. Teal: Oh, yes. And you can state where you have built bridges and where you are obligated to build them, if you desire.

Mr. Donnelly: I suppose the purpose of obtaining this information is to determine just what portion of that area cost the Northern Pacific Railway Company nothing?

Mr. Teal: Yes.

Mr. Donnelly: And more particularly that portion of the area that came by donation or the grant of franchises from the city?

Mr. Teal: Yes.

Q. Could you do this, Mr. Cooper, in connection with the terminal situation at Seattle: Could you state or furnish the figures showing exactly what all the terminals actually have cost the company in Seattle?

A. I don't feel at all sure that I can, Mr. Teal. I had occasion to hunt the same information at the request of the Minnesota Railroad Commission as to St. Paul and Minneapolis and Duluth, and I had the greatest difficulty in digging out those figures, and at the end of it I found they were very in-

complete and very unsatisfactory. Now, the Seattle situation is complicated by the fact that considerable of the property that we now own was originally acquired by the Seattle, Lake Shore & Eastern, which road went through receivership and was reorganized and became the Seattle & International, and then was merged into the Northern Pacific. Also, there was quite a part of that right-of-way that we acquired in a trade with the Columbia & Puget Sound Railroad Company, now owned by the Pacific Coast Company. Now, as to that property—which is a considerable part of it—I doubt my ability to find the first cost, because I doubt if we have the original title papers, in fact I am sure we haven't got the original title papers as to that property. We may have as to the Seattle & Eastern Railroad property; I don't know until I look it up.

Q. Your books show to some extent what properties you have bought in Seattle and what you have paid for them, do they not?

A. To some extent, yes.

Q. Could you furnish a statement showing the acreage purchased, so far as you can, and the actual value of that?

A. Yes, sir.

Q. I mean the actual purchase price.

A. Yes, sir. In other words, you would like this Seattle statement made to the furthest extent that I can from the records available?

Q. Yes.

A. Because that will show them the acreage that you can show, and the actual cost.

Mr. Donnelly: That, then, would probably cover the previous request.

Mr. Teal: What is that?

Mr. Donnelly: That would show just what had actually been paid.

Mr. Teal: No, there is a little difference between the two things.

Mr. Donnelly: You wanted that independently?

Mr. Teal: Yes.

Q. Now, Mr. Cooper, I don't want to go through all of these different terminals in this way, but I will ask you just one or two questions about others, and then ask you if they are illustrative of them all. Take at Spokane, Washington: there is 422 acres figured in the terminal grounds there. Are those all in railroad use in Spokane?

A. There is a portion of the right-of-way at Spokane that is leased for industrial and commercial purposes—a part of

the charter right-of-way. That is leased under terms which give us the right of cancellation, if required for railroad purposes, upon one year's notice or less. That property is a part of the original right-of-way, as I have said, and is leased for these purposes under leases containing that condition.

Q. That property lies along both the north and south sides where the warehouses are?

A. Yes, sir.

Q. And it is leased to people for warehouse purposes generally, is it not?

A. Yes, sir.

Q. And you get a revenue from that?

A. Yes, sir.

Q. Could you state how much revenue you receive from rentals in Spokane on property on the terminal grounds, how much of the acreage in Spokane is not used for railroad purposes, and the value of that portion that is leased and is not used for railroad purposes in Spokane?

A. I have not that information with me at all.

Q. That could be easily procured, could it not?

A. That could be procured, if you will eliminate the word "easily."

Q. Well, I imagine you collect your rents very promptly?

A. Oh. yes. All of this means work, of course, and it means considerable work, and it is not quite as easy to do as I think you have in your mind, Mr. Teal. But it can be done. It is a question of how much and how far we ought to be asked to do this kind of thing.

Q. But, Mr. Cooper, there is absolutely no way that a court can pass on this, unless it has the facts, you know, before it, and you gentlemen are raising this issue. We did not raise it. So that I will have to ask that in the Spokane terminals—that is, in the acreage in the Spokane terminals, that the information be furnished showing the amount of that acreage which is not used for terminal purposes, and its value, the amount that is reached and the amount of rentals received therefrom, and the values—as asked in the previous question.

A. Will it be satisfactory if these be made up and submitted as soon as we can get it?

Q. Yes.

A. By that I mean—I am going to Washington tonight, and all this work is going to take some time and going to take my personal attention.

Q. Yes. That is quite satisfactory, as long as it is done

within a reasonable time, and, as far as I am concerned, you can be the judge of the reasonable time.

Mr. Donnelly: It probably will not be necessary for Mr. Cooper to again take the stand; he can submit those things?

Mr. Teal: I am inclined to think so.

The Witness: I will make that complete, of course.

Q. Mr. Cooper, take in Tacoma: you have 530 acres there—that is not quite a square mile of land. Do you use all that for railroad purposes in Tacoma?

A. All of that property is not in use at this time for railroad purposes.

Q. What purpose is it put to?

A. Some of it is lying idle, waiting until the time comes when we will require it; and a part of it is leased for various industrial and commercial purposes.

Q. I would like to have the same information concerning the Tacoma terminal. Now, I would like to ask you generally, so as not to go over all of this—I do not feel that that is necessary: is it or is it not a fact that in the acquisition of these terminals generally regard has been paid to the future, and that in substantially all of these cases purchases of property which is not now in use, but is intended to be used in the future, if the business develops so as to warrant it, have been made?

A. The company has, I think every one will agree, exercised reasonable prudence in providing itself with ground for expanding its terminals at the larger points. We have found, however, as well fixed as we think we are, that we still have to be buying. as that exhibit No. 1 that I made shows that I have been purchasing property at quite a number of terminal points in the last three or four years, and we are now purchasing in a few places. So that, answering your question generally, the company has property, not at all of its terminals, but in St. Paul, Tacoma, Seattle, Duluth, and Superior. It has property there which it is not using today for railroad purposes, but anticipates using within a reasonable period of time. I cannot recall at any of the other terminals any substantial amount of property—

Q. At Spokane, for instance?

A. No. At Spokane we have practically nothing there but what is in use. We are being crowded there now.

Q. You spoke about a lot of property leased for warehouse purposes.

A. Excepting that property which is leased for warehouse purposes and which really is not available for a yard. It is a part of the right-of-way.

Mr. Donnelly: Part of the granted right-of-way?

The Witness: Part of the charter right-of-way.

Q. At substantially all of these points along the line have you not property that is used for warehouses and rented for such purposes—stores?

A. Not for stores.

Q. Well, warehouses?

A. Yes. Under our rules we do not lease our property for purposes other than which require track facilities.

Q. That is what I mean—commercial purposes requiring track facilities.

A. Commercial and industrial purposes. There are some. I don't want to say that at every point we have property leased, but we have at most of these points; the idea being that here is a piece of property which we do not require today, but will require some time in the reasonably near future, therefore we might as well put it to a beneficial purpose in the meantime, making use of it and getting some revenue from it which goes into our treasury.

Q. There is one other question I desire to ask you in connection with this valution. The valuation submitted, as I understand it, is based upon the value of the property in the opinion of these gentlemen you have chosen, or selected, as it stands today, for commercial purposes or for the best purposes to which it could be put—the most available purpose.

A. That is right. That is to say, putting it in another way, and I always prefer to use that expression—it represents its value on the basis of the cost of reproducing it today.

Q. Yes; but we sort of come around in a circle there. For instance, let me illustrate: if the railroad was not there today, we will say in Yakima, or any other point, then this land that is used for warehouse purposes and that you receive rents from, would have no value for that purpose, would it? It is only the trackage that gives it the value, is it not?

A. Oh, no. If the railroad wasn't there that property would probably be covered with retail stores and business blocks. It is all right in the heart of the city of North Yakima.

Q. I only used North Yakima as an illustration. I am speaking of where it runs along through a city, or through any place, as far as that is concerned: the value for its most beneficial use—whether it is warehouses or anything of that kind, is taken, is it not?

A. Yes. It is the value that is determined by what other property similarly situated is being bought and sold for in the open market. That is the basis on which we determine

what its cost of reproduction is, adding this percentage which I explained yesterday.

Q. Then, if the building of the road itself at that point creates that value, that value appears in this report as part of the cost of reproduction, does it not?

A. How is that?

Q. I say if the building of the road creates the value, or adds anything to the value of that property, that added value is reflected in these figures, isn't it?

A. Every element that goes to make up the value of the property is, of course, in these figures—every element.

Q. Yes, but when you speak of the cost of reproducing a railroad—when you start to reproduce it the railroad isn't there. Now, ordinarily speaking, when a railroad is built and a warehouse section developed, the fact that the railroad is built there, as was evidenced the other day in Portland by the increasing values when the rails were laid for warehouse purposes, that is what creates the value for that purpose?

A. Well, I don't quite agree with you there, Mr. Teal. The fact is that—take the case at Spokane: if our railroad was not there, but the city, from the existence of railroads in other parts of the town, had reached its present state of development, and the business centre was located just as it is now, our property would be more valuable if the Northern Pacific was eliminated, because the higher class of property, the higher values, are not warehouse values, but retail stores. So that this particular property (referring to Spokane as an example) might really have a still higher value if the railroad was not there.

Q. Well, to make it general: but it is true that whatever element adds to its value is considered in these figures here?

A. Oh, yes.

Q. I don't know whether I asked you yesterday or not, but would you be able to furnish the court with a statement showing the original cost of the right-of-way and terminal grounds of the Northern Pacific Railway Company?

A. I think that is absolutely hopeless.

Mr. Donnelly: Do you mean of the railroad as it stands today?

Mr. Teal: Yes. I don't know whether it is "yes" or "no."

Mr. Dillard: He said yesterday it would be a hopeless task.

The Witness: I think that is absolutely hopeless to undertake.

Mr. Dillard: He told you yesterday that it would be a hopeless task and he would be unable to do it.

Q. Can you give the figures of the area of the original land grant to the Northern Pacific?

A. Of the land grant?

Q. Yes. The extent.

A. With the explanation that the land grant is not yet finally adjusted. That is to say, there is quite a large area of the land grant unsurveyed yet, and we cannot determine exactly how much land will ultimately be patented to us under the grant. I will state that it will be about 40,000,000 acres.

Q. That would be the total grant?

A. That is the total land grant.

Q. Could you give the court any approximate idea of its value at the time it was granted?

A. I could not. On July 2, 1864, it could not have been worth very much; but that was before my time. I was in Scotland then, so I could not attempt to figure how much that land grant was worth.

Q. But its value was very little compared with what it is today?

A. That is true, of course.

Q. Do you carry any entry on your books that would represent the value of the original grant?

A. No. I am very sure that that is not carried on the books at all. We just take the—

Q. That would not be within your department?

A. No; it would be in the accounting department. But I am very sure it is not there. We just take the receipts as they come in, the sales as they are made.

Q. Could you give an idea as to how many of these lands have been disposed of?

A. Yes. I think our last annual report showed between 10,000,000 and 11,000,000 acres undisposed of.

Q. Could you give any idea of the value of that remaining on hand?

A. I could not, that would be any satisfaction to myself or valuable to any one else. So much of it we have never examined, and unsurveyed land, we have no idea what its character is.

Q. Could you state how much the company has received for the lands disposed of?

A. I have not those figures with me. They are available, but I haven't them with me.

Q. Those figures are available?

A. Those figures are available, yes, sir.

Q. And of course, to whom the sales were made—certainly of late years to whom the sales were made?

A. Yes. You mean every sale?

Q. Not necessarily. I say if it was desirable to look into it, that data is available?

A. Oh, yes.

Q. Did you say that you were an officer, or connected with the Northwestern Improvement Company?

A. I am second vice-president and land commissioner.

Q. What is the Northwestern Improvement Company?

A. It is a corporation organized under the laws of New Jersey, all of the capital stock of which is owned by the Northern Pacific Railway Company.

Q. What properties has this company?

A. It owns the land grant of the St. Paul & Duluth Railway Company. At the time we purchased the St. Paul & Duluth Railroad Company property the title to the land grant portion of it was put into the Improvement Company. It also owns considerable of the Northern Pacific land grant in western North Dakota and Eastern Montana, that was sold to it at the time of the reorganization of the Northern Pacific. It also owns scattered property—some in St. Paul, some in Minneapolis, some at other points along the line. In buying property for railroad purposes we are frequently obliged to buy more than we need, because of the ownership, and in order to more readily dispose of it, we put the title to this, what you might call surplus property, in the Improvement Company, it having no mortgage, and it is easier to transfer than to carry it in the railroad company, which involves securing the release of its mortgages. The Improvement Company also owns all of the coal properties. By all of the coal properties I mean the coal properties of the Northern Pacific system. They are all owned by the Improvement Company.

Q. That includes the coal properties that were acquired under the land grant, does it not?

A. Yes, sir.

Q. The Rosslyn mine and those places?

A. The Rosslyn mine, the Red Lodge, Ravensdale, Belmont, Chestnut; in fact, all of the coal properties. Well, I am not getting that exactly right. It includes all of the operated coal properties. The Northern Pacific still holds title to its coal lands received under its grant, excepting the portions that are in the coal fields where the mines are being operated. The mines being operated by the Improvement Company, the title to such of the land grant lands as are in

each of these fields was transferred to the Improvement Company.

Q. Has that company within the last few months paid a dividend of about 699 per cent. to the Northern Pacific Railway Pacific?

A. Really, I don't know. They paid a pretty good dividend, but I didn't get any of it and I don't know what the amount of it is.

Q. Didn't it amount to over $17,000,000?

A. Really, I don't know what the amount was.

Q. You are a member of the board of directors?

A. Yes, sir.

Q. And voted to declare the dividend?

A. I don't think I was at that meeting.

Q. And so you don't know what the dividend is?

A. Really, I don't. I probably did know. I have seen it, but I don't recall it now. I am not trying to evade the question.

Q. Oh, I know that. Well, perhaps you would recall it this way: after that dividend was paid was there not an extra dividend declared on the entire capital stock of the Northern Pacific by reason of the declaration of that dividend of 11.26 per cent.?

A. There was an extra dividend declared, and perhaps that is the figure, but I have never paid any attention to those figures.

Q. Now, you stated that the Northwestern Improvement Company had no mortgage?

A. No, sir.

Q. It has bonds issued to the extent of $7,000,000, hasn't it?

A. Yes, that is right.

Q. Are the bonds secured by mortgage?

A. No, sir.

Q. I notice on the balance sheet of June 30, 1908, of the Northern Pacific Railway Company, that there is $7,000,000 worth of Northwestern Improvement Company bonds in the treasury, and 2,775,000 shares of the Northwestern Improvement Company's stock carried at par. This was June 30, 1908. Now, that was before the declaration of that dividend, was it not?

A. Really, I don't know. I really don't know when that dividend was declared. I know, of course, it was recent, but I really don't know whether it was before or after that. You

see, Mr. Teal, I don't want you to think that I am trying to evade answering. These are matters that I—

Q. I believe that, Mr. Cooper. I have said that I never saw a fairer witness.

A. I really don't pay attention to these things.

Q. I was just wondering how the statement was put out at par, with $17,000,000, or nearly eight times the amount of the capital stock, on hand. But I will have to take that up with the comptroller. You spoke also of a Northern Pacific Coal Company. Is that another organization controlled by the Northern Pacific Railway Company?

A. That is not in existence now.

Q. That was in the earlier days?

A. Yes; back in the earlier days.

Q. And the Northwestern Land & Development Company; is that out of existence also?

A. That is out of existence, yes, sir.

Q. And the old Tacoma Land Company has been wound up, hasn't it?

A. There is now a Tacoma Land & Improvement Company, which is the name of the reorganized company; but in that company the Northern Pacific has no interest whatever.

Q. They are out of all that?

A. They are out of it entirely.

Q. In the old Tacoma Land Company a number of directors of the Northern Pacific were interested in that, I think you testified?

A. C. B. Wright was the president of that company for a long time when he was one of the Northern Pacific directors, and I rather think John C. Bullit, of Philadelphia, was a director of the Northern Pacific and also interested in the Tacoma Land Company.

Q. You have nothing to do with these reorganized companies, have you—the Tacoma Land and—

A. Thank God, no.

Q. Amen. Now, did you participate in the Wisconsin valuation of the Northern Pacific?

A. No, sir. That was made before I had anything to do with these matters. I think it was made either at the time while I was on the coast or while I was general manager; but I know I had nothing to do with it.

Q. I think the Wisconsin values of railroads in that state were made two or three years ago, since the Commission was appointed?

A. I think that is true, but I know it was before my time.

Q. So, you don't know how the Wisconsin valuation of the property in that state compares with your valuation, do you?

A. No; I have never had any occasion to look into it.

Q. I understood you to say that that example of the Dakota farm and of the price that you paid there in that condemnation case were rather extreme examples, were they not, Mr. Cooper; but you don't undertake to say that is what you go up against all the time?

A. Oh, no; oh, no. Otherwise, of course, the multiple of 3 would be entirely too low.

Q. That is what I supposed.

Mr. Teal: I want to make it just as easy for Mr. Cooper as possible. Of course it is natural we haven't had time to look over these things, and it may be we would want to call Mr. Cooper for a few questions hereafter. I will let him know in time enough.

By Mr. Wimbish:

Q. Does the Northern Pacific carry an account on its books showing the cost of its properties?

A. I really don't know, Mr. Wimbish.

Q. It is not in your department?

A. No, it is not in my department, no. It would be the comptroller.

Q. I won't press the question. Are you familiar with the taxable values of the physical properties of the Northern Pacific Railway? Is there any such account?

A. I assume the tax commissioner could make you up a statement of that kind. We made one up in this Spokane rate case at the request fo Mr. Prouty. The difficulty in making any use of those figures is that in Minnesota we pay under the gross earnings law, so there is no assessed valuation of our property, and the statement that was made in the Spokane rate case would be entirely out of date now, as they are doubling our taxes every year. So that the figures would all have to be made over again; and, as I say, because of the gross earnings law in Minnesota, they would be of little value. But it is something that I have nothing to do with. It belongs with the tax department, which is not under my jurisdiction at all.

Mr. Wimbish: Will there be a witness on the stand who is familiar with that subject?

Mr. Donnelly: I did not contemplate calling any one, Mr. Wimbish. I may say this whole feature was gone into in the Spokane rate case, and so far as that information was available it was supplied; but it was recognized everywhere that it was utterly useless, for the very reasons that Mr.

Cooper speaks of. Some places it is not an assessed valuation that is used for determining what the taxes should be, as in this state, where they pay a gross earnings tax.

Mr. Wimbish: Then, it is not available to find the taxable value of the physical properties of the Northern Pacific and other railways?

Mr. Donnelly: No, not as a whole—the assessed value.

Re-direct Examination by Mr. Donnelly.

Q. Mr. Cooper, Mr. Teal suggested the Seattle, Tacoma & Spokane terminal properties as being fairly illustrative of the quantity of land owned by you at the various terminals that was not in actual use for railroad purposes. I will ask you to state whether it is not the fact that that quantity is very much greater in those three places than it is anywhere else?

A. Oh, yes; very decidedly so; very decidedly so.

Q. Except for those three places, isn't it practically true that all of the property used in the other terminals, or all of the property shown in your valuation, is in actual use?

Mr. Teal: I think the witness testified that was not the case.

Mr. Donnelly: He enumerated two or three places where there was some.

Q. But generally speaking, isn't that true?

A. At Duluth and St. Paul we have what you might call surplus property, besides Tacoma, Seattle and Spokane. Excepting those five points we have no substantial quantity of land anywhere that is not in use.

Mr. Teal: Pardon me. Didn't you say Superior in your other answer, also?

The Witness: And Superior; that is right. Superior is right. That makes six points.

Q. Have you at any of these places any land included in these terminal valuations that in your judgment and in the judgment of the company is not either necessary for its uses now or likely to be used within the near future?

A. We have no property that is not, in my judgment, either in present use or likely to be needed within a reasonable period of time. I eliminated at Tacoma and Seattle both the only properties that I felt at all doubtful about in that respect. I cut them out of this valuation.

Q. At Spokane, this property that is leased is, for the most part, property to which the track facilities of the Northern Pacific extend, isn't it—warehouses?

A. Entirely so. It is all served by tracks. It is a row of warehouses along our right-of-way and parallel to it, and they are all served from sidetracks on both sides of the line—part of the 400-foot right-of-way. We cannot sell the property. We have no immediate use for it. When I say we cannot sell it, I mean that under the Supreme Court decision in the Townsend case we are forbidden to sell any portion of th charter right-of-way. Therefore, not having any immediate use for it, we use it for these industrial and commercial purposes.

Q. The land that was granted to the Northern Pacific, about which Mr. Teal has asked you, of course, land that was granted to the old Northern Pacific Railroad Company?

A. That is correct.

Q. And the present Northern Pacific Railway Company is not a federal corporation, but a corporation organized under the laws of Wisconsin, and which acquired the land grant with the other railroad property at the time of the foreclosure of the mortgages in 1896?

A. That is correct.

Q. You were asked last night, Mr. Cooper, about the estimate of the engineer of the State of Minnesota, or the expert of the State of Minnesota who appraised the value of the real estate used by the Northern Pacific in this state. I think you said that his valuation was somewhere in the neighborhood of $15,000,000, whereas your was about $25,000,000. Now, have you anything to say as to the methods pursued in arriving at his valuation as compared with those by which you reached your own?

A. The valuation made by the state engineer showed a total in the cities of Duluth, St. Paul and Minneapolis of $12,400,000. My valuation on the same property was $20,400,000. When the state engineer disclosed his values so that we could see what they were, and we saw this startling difference, we proceeded to make an analysis of the situation and determine the cause of the difference. The state engineer, in his published report, and also in his testimony in the Spokane rate case, testified that he made up his valuation in these three cities on what he called the sales method. That method (and I am trying to state it as accurately as I can) consisted in determining first the relation that the assessed value bore to the selling price in each of these cities as a whole. He determined that in St. Paul the assessed value was 60 per cent. of the sales value, or true value, as he called it; in Minneapolis it was a little less than 60 per cent.; and in Duluth

I don't remember the figures. It is immaterial. We were not very far apart in Duluth. He then determined what assessment would have been made on the property of the different railroad companies had it been assessed. That is to say, the railroads in this state paying in taxes under the gross earnings law their property is not assessed. Therefore, to carry out his plan he had to determine as best he could what the assessed valuation would have been had it been assessed; and that he determined by taking a strip bordering on the railway company's property on each side, taking the assessed valuation of that strip and determining then what the assessed valuation would be of the railway property if it had been assessed. Having determined the assessed valuation in that way, then he applied this 60 per cent. method in St. Paul to determine what its true value would be. He then took all of the property purchased by the various railroad companies in St. Paul for several years back, ascertained what it had cost them, and determined its true value in the method that I speak of to find out how much in excess of true value the railway companies had to pay for property, recognizing the principle that I have spoken of in my testimony that a railway company has to pay in excess of true value. In that way he determined that the railway companies had to pay in St. Paul 75 per cent. more than true value. He applied the same method exactly in Minneapolis and Duluth, varying the percentage figures slightly. In that way he produced this result which I have stated as to the value of our property in these three cities. It being evident that the foundation of his plan was the assessment, and it being notorious that the assessment in St. Paul is of the most erratic character, we proceeded to get some figures to show the fallacy of determining a value in that kind of a way. I prepared a statement which gives in detail all of the property purchased by the Northern Pacific Railway Company within the corporate limits of St. Paul, from January 1, 1905, to December 31, 1908, showing the purchase price and the assessed valuation and the percentage which the assessed valuation bore to the purchase price. I have that statement here and it shows that the percentage of the assessed valuation to the purchase price varied from 1.9 per cent. in one case to 87.7 per cent.; but the average of the whole thing was 27.8 per cent. instead of 60 per cent. As showing further the fallacy of determining a value in that way, I will read the variation and percentage in these assessments. This is each different purchase that I am reading: 5 per cent; 16½; 23.3; 16.4; 27.9; 18.7; 1.9; 2½; 50.7; 7

per cent.; 4½; 70.6; 27.3; 40 per cent.; 87.7; 40½; 37½; 26.7; 22.4; 36 per cent.; 29 per cent.; 29.9; 22.7—the average of the whole thing, as I have said, being 27.8; the total amount of property purchased being $433,310.61—that being the purchase price. I prepared a similar statement showing the property which we had purchased at Minneapolis, in which city we have made quite a number of purchases. From January 1, 1905, to December 31, 1908, the total amount of purchases aggregate $185,063.41. Without taking up the time to read all of these various percentages, I will state that it runs from 7½ per cent. to 142 per cent., and averages for all of the purchases 34.6 per cent. I then prepared a statement showing the application of the plan of the state engineer to the property which the Northern Pacific had actually purchased in St. Paul and Minneapolis, as shown in the two detailed statements from which I have been reading. That statement showed that we paid for the property $618,374.02; but, according to the state engineer's plan, we should have bought it for $447,124.88. In other words, we paid 38.3 per cent. more for the property than we should have paid. To put it in another way: If we had been able to find people willing to sell their property on the state engineer's method of determining value, we would have paid for it $447,124 instead of what we actually paid—$618,374.02. I thought there could be no better test of the engineer's plan than to apply it to the property which the Northern Pacific had been buying from day to day for the last five years, and that is the result, as I have shown there.

Q. Now, was that plan applied generally through the state, or simply to terminals?

A. That plan was only applied to these three cities. Keeping in mind always the foundation of the state engineer's plan of determining values was the assessment, I had a statement prepared by an abstract company here in St. Paul of all of the transfers of property for which instruments were recorded during the two months of this year from January 1st to February 28th; took every instrument as it went on the books. We took the consideration as shown on the instrument. We went to the assessor's books, found out the assessed valuation, and the result was as follows: I should explain, however, that we eliminated nominal consideration instruments, because of course they could not appear without upsetting all the figures. We found in those two months there was a total of 411 transfers. The percentage of the assessed valuation to the consideration in 14 of those instruments was ten per cent. or less;

there were 12 transfers between 11 per cent. and 20 per cent.; 24 between 21 and 30 per cent.; 55 between 31 and 40 per cent.; 60 between 41 and 50 per cent.; 51 between 51 and 60 per cent.; 41 between 61 and 70 per cent.; 31 between 71 and 80 per cent.; 18 between 81 and 90 per cent.; 17 between 91 and 100 per cent.; 88 transfers over 100 per cent, making a total of 411 transfers. When we had that data prepared and introduced into the Minnesota rate case we felt that we had disposed of the state engineer's plan of determining values of railroad property, or, rather, determiinng the cost of reproducing railroad properties in these three cities.

Mr. Teal: Pardon me. What was the average percentage of those 423 transfers?

The Witness: 411 transfers. The average was 50½ per cent. Now, I have been discussing so far Duluth, St. Paul and Minneapolis. In other cities, towns and villages in the State of Minnesota, the state engineer reported a value of $1,874,392.49, whereas the valuation which I made for the company of the same property, precisely, was $3,112,815—and keep in mind that we are now talking of the valuation of the railway company's property in all cities, towns and villages in the State of Minnesota other than St. Paul, Minneapolis and Duluth. The state engineer testified that he had appraised this property by sending men out to investigate as to its values, and made up his appraisal in that way. Looking over his appraisal and comparing it with my own, I was struck by the fact that he cut me in half so many times, and I wondered how an independent appraisal could hit exactly one-half of my figures. I then went to work and figures out the percentages that he had cut my figures in each case, and I found this situation: there were 78 items (meaning 78 of these towns, cities and villages). He decreased me one item 4/5, four items 3/4, five items 2/3, six items 3/5, 26 items 1/2, four items 1/3, three items 1/4, three items 1/5. His appraisal was identical with mine on eight items. And then there were eighteen items of varying percentages. Now, keep in mind that when I say 4/5, 3/4, 2/3, and so on, I mean exactly that to a cent. It seemed to me manifest that the state's appraisal of these cities, towns and villages was made by taking an axe and chopping my figures, because out of the seventy-eight items we found eight identical, and fifty-two of these exact percentages of reduction. I concluded then, in order to satisfy myself as to whether my valuation or the state engineer's valuation was right, to have an independent appraisal made by local real estate dealers of the thirteen largest towns in the state

other than St. Paul, Minneapolis and Duluth; and by the thirteen largest I mean that I took the thirteen in which my valuation was the greatest. That appraisal was made exactly in the same form in each case, as I read yesterday in the case of Brainerd; that is to say, Brainerd was one of the towns that I had appraised, and in my testimony yesterday I read the certificate of the appraisers showing just exactly how they had made their appraisal. These thirteen towns are Brainerd, Stillwater, Little Falls, East Grand Forks, White Bear, Moorhead, Staples, Crookston, Wadena, Detroit, Fergus Falls. My valuation on those thirteen towns was $911,440.05. The state engineer's figures on those same towns were $455,667.92. The figures of the local appraisers on those same towns were $1,282,612.46. In other words, the state engineer reduced my figures approximately one-half; the local appraisers increased them from $911,000 to $1,282,000.

Q. Were these local appraisers apprised of the purpose for which the appraisal was sought?

A. They were not. They knew nothing about the purpose of it at all, were not informed as to my figures or the state's figures, and made an entirely independent valuation. They were furnished by us with maps showing the property owned by the company, and they were furnished with the form of certificate that we required, and we told them, "Now, that certificate tells you all you are going to be told; that is the basis on which you are to do this work." In each case they divided our property into districts convenient for valuation purposes, and there is every indication on the face of all these reports that they made a careful, fair appraisal.

Q. Is that true of St. Paul and Minneapolis as well?

A. No, St. Paul, Minneapolis and Duluth were handled in a different manner. When we were called upon to make the report, the valuation—

Q. Well, I mean it was true that they did not know the purpose of it?

A. No, they did know the purpose.

Q. I thought they didn't?

A. They were informed that we had been called upon by the State of Minnesota to make a valuation of our property and that we had concluded to employ three local real estate men in each of these three large cities to do the work. They were furnished the maps, and took them off and made up their figures and their report by themselves.

Q. But was any intimation given to the appraisers as to

whether the company desired a high valuation or a low valuation?

A. Oh, not at all. They were to use entirely their own judgment. And in proof of that, if any were needed, as I testified yesterday, I reduced the St. Paul and Minneapolis to some extent, and have since realized I made a mistake in reducing their figures, and in this report I have used their figures. Now, there is still one other item in the aggregation which I made. I have discussed Duluth, St. Paul, Minneapolis, and other cities, towns and villages. That leaves only the country right-of-way to consider. The valuation of the company in the country right-of-way was $1,637,681.10. The valuation of the state engineer was $960,683.75. I concluded that as good a way to refute the state engineer's figures as any that could be found, was to take what it actually had cost us to buy some right-of-way between Wadena and Glyndon, and I will now read what I practically testified to on that subject in the Minnesota rate case:

In the report made by the company to the state, the right-of-way between Frazee and Detroit, in Becker County, is shown as having a market value of $35 per acre and a right-of-way valuation of $105 per acre. (You will observe that that is the multiple of 3 there.) And in the same report the right-of-way in Clay County, Minnesota, is shown as having a market value of $50 per acre and a right-of-way value of $150 per acre.

I present a statement showing in detail all purchases of right-of-way made for the line changes between Frazee and Detroit and between Lake Park and Glyndon, embracing portions of Becker and Clay Counties. The statement gives full details of every purchase, showing the name of the party from whom purchased, the description of the property, the acreage, and the price. This new right-of-way runs through the villages of Lake Park and Hawley, and in order to make a proper comparison the right-of-way through these two villages is shown separately in the statement, and the statement summarized under the different headings of "Hawley," "Lake Park," and "Country." The statement shows that the cost per acre of the country right-of-way averaged $142.15 for 565.84 acres. This new right-of-way was not included in the report made to the state, but the old right-of-way was at the values which I have stated; that is to say, $105 in one county and $150 in another. The relative position of the two rights-of-way are shown on the blue-prints, on which the old right-of-way included in the report to the state is colored yellow

and the new right-of-way is colored red. It will be observed that the two rights-of-way are at no point more than about two miles apart, and they run through land of similar value and character. Therefore, the company's valuation of the old right-of-way, of $105 and $150 per acre, are fully justified by the actual cost of the new right-of-way, which was $142.15 per acre. The report of the state engineer shows a market or true value of the old right-of-way between Frazee and Detroit and between Lake Park and the county line of Becker County, of $18 per acre, and a right-of-way value of $54 per acre; also shows a market or true value in Clay County of $24 per acre, and the right-of-way of $72 per acre. Both the company's and the state's engineers used the same multiplier of 3, and the figures quoted in each case are for right-of-way in the country and do not include any towns or villages. Summarizing, the right-of-way in the districts under consideration valued by the company at $105 and $150, respectively, per acre, is reduced by the state to $54 and $72, respectively, per acre, whereas the actual cost of the new right-of-way was $142.15 per acre.

Now, there is comparison made of an actual purchase of 23 miles of right-of-way, with an estimate made by the company which was substantially verified by the actual cost, and showing that the state engineer's figures were entirely too low when tested by actual purchases.

By Mr. Teal:

Q. The fact is that all the values, so far as those fixed by the railroad company in this case are concerned, are the result of the opinions of local dealers or business men in the particular towns where the property is situated? I am speaking now of right-of-way.

A. That is true to some extent, excepting always keeping in mind that I have verified it myself, and I have used these local appraisers' figures where I was satisfied they were right. I want to say, however, that I have used them fairly. I have used them for or against us, because some of these local appraisals have shown that I was too high; for instance, in Butte, as I explained yesterday, my estimate was too high.

Q. Yes, I understand that. I was simply getting at the method. Generally speaking, that was the method by which you arrived at it?

A. Generally speaking, we employed the best talent we could find to make this appraisal.

Q. Now, in connection with the valuations of these properties where the different railroads themselves were adjacent

and interested, was there any wide divergnce of opinion as to valu between the railroad people?

A. No. Let me explain about that, Mr. Teal. The different railroad companies were all simultaneously called upon by the state to make this report, and a meeting was held in my office of the land commissioners or whatever officials had charge of the work of making the real estate valuation. We wanted to consider a number of things, some of which were not clear in the instructions to us as to what the state wanted. The suggestion was made at that meeting that in view of the importance, from a money standpoint, of our properties in these three large cities, that the railroad companies together employ the three best real estate men, in our judgmnt, fitted for this work, and that was agreed upon. Therefore, the same three men valued the properties of all the different railway companies in St. Paul, excepting the Milwaukee, which had made its own appraisal prior to that time, and another set of three men made the appraisal in Minneapolis, and still another group of three in Duluth, for all the railway companies.

Q. So that on the terminal properties in Duluth and St. Paul and Minneapolis there was not any wide variation in opinion, was there? They had to be the same?

A. They had to be the same, with just such difference in location called for.

Q. And local people in each instance were chosen?

A. Yes, sir, three local real estate dealers in each case.

Q. Real estate dealers?

A. Yes, sir.

Q. When you came to value your own property, where rights-of-way and things of that kind were considered, was there any wide variation at any time between the opinion of the railroad men, where the tracks were contiguous, or adjacent, as to what they would be worth?

A. No, I never compared my figures with those of any other railroad company at all. There are a few cases, perhaps, where a fair comparison might be made between a piece of our line and a piece of another line running through about the same country, but I have never done that at all.

Q. Take this little town of Fridley; don't you both run alongside of each other there?

Mr. Donnelly: What do you mean by "you both?"

Mr. Teal: The Northern Pacific and the Great Northern.

A. Yes, sir.

Q. And don't you go in on one side of a shed and the Great Northern on the other side, using a common shed there?

A. Yes. Well, really, I don't know whether there are two sheds or one shed. I know there isn't much.

Q. You run parallel?

A. The two railroads are side by side; in fact, the two tracks are used now as a double track, under an agreement between the two companies.

Q. Do you know what the opinion of the Great Northern was as to the value of the cost of reproduction per acre at that particular point?

A. You mean what they reported?

Q. Yes.

A. No. I saw, I think, what was said in the report there about that—that they had a much higher valuation than we had.

Q. They had about $3,000 an acre?

A. Yes, I believe that is the figure.

Q. And your figure on the same property was $600 per acre?

A. Well, that is not correct, you know. That is an unfair statement in the book you have there. I will explain to you why, now that you have brought the subject up. My valuation was in a chunk, which included the smaller strip, while the Great Northern, at $3,000, included the station grounds. Mine, while it included the smaller strip, was the larger in a way. Still, if you want my opinion, I think the Great Northern is high.

Q. I wanted to ask you one question, simply to get into the record your judgment about that. There is really a very wide difference of opinion between different people, is there not, as to the valuation of any particular tract of land or any particular piece of land?

A. Well, no, I don't want to assent to that, Mr. Teal. There should not be such a wide difference of opinion between men who are equally well posted in values and the prevailing pieces of property. One man may be pessimistic and the other optimistic, which would make some divergence in their views. One's breakfast, or lunch, or dinner may not sit well with him and he may think a piece of property not worth as much because the world looks a little blue; but there should not be any very great difference between equally well posted men. And still, of course you are bringing judgment and experience into it, and there is bound to be a variation.

(A recess was here taken until 2 o'clock P. M.)

WILLIAM L. DARLING, being duly sworn as a witness on behalf of the complainants, testified as follows:

Mr. Wimbish: I believe it is understood that the objections heretofore entered extend to all of this testimony?

Mr. Donnelly: Yes, to all of the testimony; that is understood, Mr. Wimbish.

Direct Examination by Mr. Donnelly.

Q. Mr. Darling, state your full name.

A. William L. Darling.

Q. And you reside where?

A. St. Paul, Minnesota.

Q. What relation do you sustain to the Northern Pacific Railway Company?

A. Chief engineer.

Q. You are a civil engineer by profession?

A. Yes, sir.

Q. What has been your experience as a civil engineer?

A. Since I graduated from the Worcester Polytechnic Institute, in 1877, I have been with railroads, with the exception of one year's absence.

Q. You have had an experience, then, of something over thirty years?

A. Yes, sir.

Q. All in connection with railroads?

A. Yes, sir.

Q. How long have you been connected with the property of the Northern Pacific Railway Company?

A. I first went with the Northern Pacific in March, 1879, and stayed with them until the fall of 1883; then with the St. Paul & Pacific, which is now part of the Northern Pacific, until the summer of 1884. Then I went with the Burlington, on surveys in Iowa, went from Greenfield toward Macedonia and Council Bluffs. In that fall I went to Florida for some Chicago capitalists, where I made surveys for a branch line from Chipley to St. Andrews Bay, on the Gulf of Mexico. I then went with the Burlington & Northern, in 1885, when they built into St. Paul. I had charge of the St. Paul and Minneapolis terminals for two years, during 1885, 1886 and the first part of 1887. In 1887 I had charge of the location and construction of the Duluth, Watertown & Pacific from

Watertown to Huron, until it was completed. Then I made surveys—a location—for a railroad from Yankton to Sioux Falls for the people of Yankton. Directly after that I went with the Northern Pacific, which was late in 1888, and was with them continuously until 1903. From 1903 to October, 1905, I was with the Rock Island system, as chief engineer. From October, 1905, to January, 1906, I was with the Pacific Railway, locating a line across the State of Washington. In January, 1906, I went again with the Northern Pacific and have been with them ever since.

Q. And the whole of your experience with the Northern Pacific has been in the engineering department?

A. Yes, sir.

Q. And a considerable portion of the time at least you have been engaged in the actual construction of the railroads of the company?

A. All of the time.

Q. All of the time?

A. Yes, sir.

Q. How thoroughly do you know the Northern Pacific property as a whole, Mr. Darling? I wish you would give the Master some idea of the extent to which you have gone over it, main lines and branches.

A. My first experience with the Northern Pacific was in the spring of 1879. I had charge of about fifty miles of the construction of the line west of the Missouri river, during the year 1879, and was on surveys extending from the Missouri river to the Yellowstone, 217 miles. That winter and the next spring I was employed all along the Yellowstone, a distance of 340 miles, locating and getting work ready along the Yellowstone bluffs. That extended out as far as Livingston. The next spring, in 1881, we started in at Bozeman, about 25 miles west of Livingston, and made surveys through to Thompson Falls, where we connected with parties working from the west. That took us over all the line west of the Missouri river except the portion between Livingston and Bozeman, about 25 miles. Then I made several surveys and reconnaissances for side lines in through Montana, and after that was completed I had charge of the construction through what is known as the Hell Gate Canyon, and I stayed there until the road was completed through in 1883. Then I came back to St. Paul and had charge of the terminals in St. Paul and Minneapolis, and had charge of the line of the Northern Pacific from Northtown Junction to St. Cloud, a distance of about 72 miles. Then, at that time I left and

went to Florida, and then went with the Burlington. When I came back in 1888 I had charge of the bridge across the Yellowstone at Red Lodge, Montana, just out from Laurel, west of Billings, and part of the Red Lodge branch. As soon as we finished there, I came back to Little Falls and had charge of the cut-off of the main line from Little Falls to Staples, where they cut off for Brainerd, which was a distance of about 34 miles. As soon as we got through there I went to Montana, and had charge of the location and construction of the Boulder & Elkhorn branch and the Coeur d' Alene branch over the Coeur d' Alene mountains into Wallace. Then I was made principal assistant engineer of the Northern Pacific, and had charge as engineer of construction and maintenance of way over what is known as the Middle District, extending from Mandan west to Spokane. I stayed there a little over a year, and then came to St. Paul as principal assistant engineer on the first district, eastern district, in charge of maintenance and construction, and stayed there as principal assistant engineer and division engineer until I was made chief engineer for the receivers, in 1896, I think, and was there one year. Then the receiver was made chief engineer, and I was assistant chief engineer from that time until the fall of 1901, when I was made chief engineer. I stayed with the Northern Pacific then as chief engineer until the fall of 1903, when I went to the Rock Island system. In the spring of 1906 I came back as chief engineer, during which time we re-built a great part of the road and built some side lines and branches. That brings me up to the present time.

Q. And in doing that you had considerable experience with the actual construction of the road?

A. Yes, sir.

Q. Are you engaged in any actual construction work now?

A. Yes, sir.

Q. And have been more or less continuously during the greater part of this period, haven't you?

A. Ever since the spring of 1906, yes, sir.

Q. Is there any portion of the Northern Pacific road, main line or branches, with which you are not familiar?

A. I don't think so, no, sir.

Q. You have been over the most of it or a good part of it on foot, I suppose?

A. Yes, sir.

Q. As engineer in charge of construction, do you have any

knowledge of the cost of the various items that go to make up the cost of construction of the road?

A. Yes, sir, I think so.

Q. Is it the duty of an engineer to have that information?

A. Yes, sir.

Q. That is a part of his work, I suppose?

A. Yes, sir.

Q. He has knowledge of the cost of construction?

A. Yes.

Q. Do you feel, from the knowledge so gained and from your experience in connection with the Northern Pacific property, that you are qualified to state what it would cost to reproduce that property at the present time?

A. Yes, sir, approximately; as closely as any one can make an estimate without more time and more expense, going over the road.

Q. But with as near an approach to accuracy, I suppose, as it is possible to arrive at it in that kind of a matter?

A. Yes, sir.

Q. Have you prepared such a statement?

A. Yes, sir.

Q. Just produce that statement, Mr. Darling.

A document was produced by the witness, and marked Complainant's Exhibit 4 (Darling).

COMPLAINANT'S EXHIBIT 4 (DARLING).

NORTHERN PACIFIC RAILWAY.

Cost of Reproduction as of April 12th, 1909.

OPERATED MILEAGE.

Main Line	2,819.92	miles.
Branches	2,945.79	"
Second Track	270.01	"
Spurs	354.34	"
Yards and Sidings	1,761.50	"
Total	8,151.56	"

1	Engineering, 3% of items 2 to 26, inclusive	$ 10,209,081.00
2	Right of Way, Station Grounds and Terminals on operated lines	114,693,882.25
3	Grading, Clearing and Grubbing	87,713,979.27
4	Tunnels	4,589,657.50
5	Bridges, Trestles and Culverts	23,304,893.00
6	Ties	20,114,438.51
7	Rails	37,692,304.76
8	Frogs and Switches	1,446,956.59
9	Track Fastenings	5,307,036.05
10	Ballast	11,129,075.10
11	Tracklaying and Surfacing	7,499,435.20
12	Fencing Right of Way	905,090.00
13	Crossings and Signs	202,921.00
14	Interlocking Plants	138,950.00
15	Signal Apparatus	83,370.00
16	Telegraph Lines and Appurtenances	1,553,243.65
17	Telephone Lines and Appurtenances	
18	Station Buildings and Fixtures	3,408,025.00
19	General Office Buildings and Fixtures	879,983.00
20	Shops, Engine Houses and Turntables	5,887,583.77
21	Shop Machinery and Tools	1,383,306.00
22	Water Stations	2,642,286.90
23	Fuel Stations	803,215.00
24	Dock and Wharf Property	4,708,281.00
25	Miscellaneous Structures	2,882,586.70
26	Joint work at Seattle, exclusive of cost of Grading and Real Estate	1,332,199.61
27	Steam Locomotives	18,567,911.67
28	Passenger train cars	7,480,602.00
29	Freight train cars	36,593,737.00
30	Miscellaneous Equipment	1,978,710.00
31	Floating Equipment	612,400.00
32	Mechanical Engineering, 1% of items 27 to 31, inclusive	652,333.61

33	Contingencies to provide for Legal Expenses, Superintendence, Organization, unenumerated items, floods, personal injuries and other unforeseen conditions that might arise during the progress of the work—10% of items 1 to 32, inclusive	$ 41,639,747.50	
34	Interest	164,388,682.09	
			$622,425,904.63
	Lines in Manitoba		7,000,000.00
	Duluth Union Depot, exclusive of Right of Way		597,545.00
	St. Paul Union Depot, 1-9 interest		627,837.77
	Minnesota Transfer Railway, 1-10 interest		575,600.00
	1-3 Interest in Lake Sup. Trml. & Tfr. Ry. Co		116,725.56
	40% Interest in Nor. Pac. Trml. Company of Oregon		2,723,010.40
	Big Fork & International Falls Ry		706,537.53
	Minnesota & International Ry., 70% interest		3,160,839.62
	Supplies on hand		5,831,584.21
	Lines under construction, including Lake Park-Glyndon, Garrison-Missoula, 2nd track Auburn-Meeker and Green River Branch Extension		9,019,283.45
	Nor. Pac. 1-3 Interest in S. P. & S. Ry., Vancouver to Portland, under construction		1,500,000.00
	Nor. Pac. 1-2 Interest in S. P. & S. Ry., under construction		27,608,733.51
	Total		$682,193,601.68

MILEAGE OF NORTHERN PACIFIC RAILWAY COMPANY AS OF APRIL 12TH, 1909.

Description	Main Track		2nd Trk.	Spurs.	Yd. Trks. & Sdgs.
	Main Line.	Branches			
WISCONSIN.	Miles	Miles	Miles	Miles	Miles
Ashland to Wis.-Minn. State Line	77.63	.....	3.90	7.32	21.22
Central Ave. to Wis.-Minn. State Line (center St. Louis Bay Bridges)	6.06	.....	4.85	1.93	18.11
Bay Front Line in Superior	0.68	.....	0.66	.....	4.43
Walbridge Line	3.16	.....	.....	.....	.....
Washburn Branch	.....	33.78	.....	0.17	6.12
West Superior Branch	.....	1.41	.....	.....	1.65
Grantsburg Branch	.....	12.00	.....	0.09	0.82
Spurs in Superior-Joint, N. P. Portion	.....	.....	.....	0.80	0.32
Totals	87.53	47.19	9.41	10.31	52.67
MINNESOTA.					
Wisconsin-Minnesota State Line to Minnesota-North Dakota State Line	237.01	.....	84.22	8.64	140.66
Rice's Point to Minn.-Wis. State Line (center of St. Louis Bay Bridge)	1.64	.....	1.33	1.49	50.98
Walbridge Line	0.09	.....	.....	.....	.....
Lake Park to Hawley	12.85	.....	12.85	.....	.....
St. Paul to Staples	139.77	.....	10.44	21.91	101.48
Little Falls to Brainerd	32.91	.....	.....	.....	4.46
Duluth Short Line	152.06	.....	16.87	16.10	89.22
Line "A," Gen. Office Bldg. to Mississippi Street, St. Paul	1.53	.....	1.53	.....	.....
Line "A," St. Anthony Park to 20th Ave. So., Minneapolis	2.57	.....	2.57	.....	.....
Line from Terminal Yard, Mpls. to Northtown Junction, Minneapolis	3.42	.....	3.37	.....	.....
Duluth Union Depot Company	0.25	.....	.....	.....	2.33
Minneapolis-White Bear Branch	.....	13.11	.....	0.87	7.96
Fond du Lac Branch	.....	12.20	.....	2.04	2.48
West Superior Branch	.....	2.01	.....	2.98	2.57
Cloquet Branch	.....	6.95	.....	2.32	3.58

Description.	Main Track		2nd. Trk.	Spurs.	Yd.Trks. & Sdgs.
	Main Line.	Branches.			
MINNESOTA.	Miles	Miles	Miles	Miles	Miles
Grantsburg Branch	.....	5.08	.....	.....	2.20
Miller Branch	.....	4.27	.....	1.25	1.24
Taylor's Falls Branch	.....	20.52	.....	0.18	2.47
Stillwater Branch	.....	12.74	.....	1.90	4.63
Little Falls & Dakota Branch	.....	87.90	.....	0.55	9.14
Fergus Falls Branch	.....	74.97	.....	0.36	7.40
Red River & Winnipeg Branch	.....	95.45	.....	1.73	22.49
Red Lake Falls Branch	.....	54.34	.....	1.04	3.31
Keystone Branch	.....	6.01	.....	.....	0.86
Joint Tracks, N. P. Portion	.....	.....	.....	2.22	1.67
Totals	584.10	395.55	133.18	65.58	461.13
NORTH DAKOTA.					
Minn.-N. Dak. State Line to North Dakota-Montana State Line	377.54	.....	46.56	17.28	163.36
Red River & Winnipeg Branch	.....	96.24	.....	0.96	15.81
Fergus Falls Branch	.....	74.53	.....	0.25	6.83
Fairview Branch	.....	13.79	.....	1.04	1.25
Fargo & Southwestern Branch	.....	148.61	.....	0.11	14.97
Casselton Branch	.....	60.18	.....	.....	4.41
Cooperstown Branch	.....	62.88	.....	.....	7.35
James River Branch	.....	48.55	.....	.....	3.01
Oakes Branch	.....	15.20	.....	.....	1.75
Devil's Lake Branch	.....	107.65	.....	.....	13.42
Sykeston Branch	.....	85.02	.....	.....	6.26
Oberon Branch	.....	28.07	.....	.....	2.77
Linton Branch	.....	44.21	.....	.....	1.24
Joint Tracks at Linton, N. P. Portion	.....	.55	.....	.....	.62
Totals	377.54	785.48	46.56	19.64	243.05

Description.	Main Track		2nd. Trk.	Spurs.	Yd.Trks. & Sdgs.
	Main Line.	Branches			
MONTANA.	Miles	Miles	Miles	Miles	Miles
North Dakota-Montana State Line to Montana-Idaho State Line	782.28	.....	11.91	25.97	327.10
Livingston to Muir Line	12.00	.....	12.08	.....	.....
Butte Line-Logan to Garrison	124.28	.....	1.69	24.31	49.77
White Pine Hill Line	28.34	.....	.....	.....	4.55
Rocky Fork Branch	.....	44.37	.....	5.00	10.86
Bark's Fork Branch	.....	19.72	.....	3.95	5.88
Park Branch	.....	54.27	.....	2.81	4.73
Gaylord & Ruby Valley Branch-Whitehall to Alder and Renova to Parrot	.....	46.81	.....	0.39	3.76
Red Bluff Branch	.....	21.00	.....	0.30	2.20
Pony Branch	.....	6.65	.....	.....	0.43
Anaconda Branch (leased to B. A. & P. Ry.)	.....	8.99	.....	2.61	16.11
Boulder Branch	.....	7.91	.....	0.88	0.79
Wickes Branch-Corvin to Wickes	.....	3.20	.....	0.99	0.26
Switchback to Montana Central Ry	.....	0.71	.....	.....	.....
Elkhorn Branch	.....	20.13	.....	0.49	1.52
Red Mountain Branch	.....	16.51	.....	2.34	1.82
Marysville Branch	.....	12.58	.....	.....	1.47
Philipsburg Branch	.....	25.94	.....	1.86	2.20
Bitter Root Branch	.....	63.82	.....	6.95	8.52
Coeur d'Alene Line	.....	109.53	.....	4.67	15.53
Cokedale Branch	.....	0.17	.....	.....	.....
St. Regis Cut-off	.....	21.18	.....	0.29	3.02
Totals	946.90	483.49	25.68	83.81	460.52
IDAHO.					
Montana-Idaho State Line to Idaho and Washington State Line	83.34	.....	5.67	9.25	20.43
Coeur d'Alene Line	.....	18.82	.....	2.70	5.00
Burke Branch	.....	7.00	.....	1.37	2.45
Sunset Branch	.....	5.35	.....	0.44	0.47
Fort Sherman Branch	.....	13.65	.....	4.66	1.82
Palouse & Lewiston Branch	.....	54.72	.....	2.79	8.34
Genesee Branch	.....	7.16	.....	0.34	1.24
Clearwater Short Line	.....	62.91	.....	0.81	5.98
Lapwai Branch	.....	66.77	.....	0.73	6.48
Totals	83.34	236.38	5.67	23.09	52.21

Description.	Main Track		2nd Trk.	Spurs.	Yd. Trks. & Sdgs.
	Main Line.	Branches			
WASHINGTON.	Miles	Miles	Miles	Miles	Miles
Idaho-Washington State Line to Washington-Oregon State Line	549.47	.....	23.78	46.47	298.68
Twenty-third Street Line in Tacoma	1.98	.....	1.96	.....	.....
Auburn to Sumas	146.07	.....	21.12	25.02	69.72
Joint Line in Seattle, N. P. Portion	1.13	.....	1.12	.....	3.37
Palouse & Lewiston Branch	.....	84.04	.....	1.79	11.31
Genesee Branch	.....	20.34	.....	0.10	2.88
Farmington Branch	.....	5.89	.....	0.08	0.31
Spokane and Seattle Ry	.....	18.13	.....	.....	0.77
Washington Central Branch	.....	129.88	.....	0.75	10.96
Pasco to Wallula Line	.....	14.87	.....	.....	7.07
Dayton Branch	.....	86.20	.....	1.29	10.86
Pleasant View Branch	.....	19.73	.....	.....	2.05
Tracy Branch	.....	6.12	.....	.....	0.43
Pendleton Branch	.....	10.68	.....	.....	.....
Sunnyside Branch	.....	20.09	.....	0.32	3.59
Roslyn Branch	.....	5.34	.....	4.32	3.74
Buckley Line	.....	33.57	1.53	4.32	7.29
Green River Branch	.....	14.79	.....	2.69	0.75
Burnett Branch	.....	3.53	.....	0.16	1.07
Wilkeson Branch	.....	16.62	.....	1.78	3.01
Crocker Branch	.....	5.44	.....	0.17	0.51
Orting Branch	.....	7.46	.....	3.65	.....
Tacoma Tide Flat Branch	.....	1.06	.....	.....	.....
Snoqualmie Branch	.....	39.19	.....	4.51	5.13
Everett Branch	.....	11.41	.....	7.66	3.62
Seattle Belt Line	.....	24.11	.....	2.76	1.19
Darrington Branch	.....	28.08	.....	2.29	1.50
Monte Cristo Branch	.....	42.12	.....	3.05	1.42
Bellingham Branch	.....	22.74	.....	2.35	2.80
Olympia Branch-Lake View to Centralia, via Gate	.....	56.18	.....	6.81	5.58
Gray's Harbor Branch, Gate to Ocosta	.....	53.29	.....	6.78	6.03
Elma Branch	.....	9.99	.....	1.16	0.42
Peninsular Branch	.....	34.73	.....	7.12	3.74

Description.	Main Track		2nd Trk.	Spurs.	Yd. Trks. & Sdgs.
	Main Line	Branches			
WASHINGTON.	Miles	Miles	Miles	Miles	Miles
Cosmopolis Branch	.....	1.81	.....	0.66	0.33
South Bend Branch	.....	56.68	.....	6.09	6.03
Yacolt Branch	.....	27.27	.....	2.66	3.19
Port Townsend Southern R. R. (controlled)	.....	41.40	.....	2.68	1.31
Joint track at Vancouver, N. P. Portion	0.06	.....	.....	.....	.....
Totals	698.71	952.78	49.51	149.49	480.66
OREGON.					
Washington-Oregon State Line to Portland	39.16	.....	.....	1.67	6.36
Pendleton Branch	.....	30.38	.....	0.61	2.75
Athena Branch	.....	14.54	.....	0.14	2.15
Joint Track at Portland, N. P. Portion	2.64	.....	.....	.....	.....
Totals	41.80	44.92	.....	2.42	11.26
SUMMARY.					
Wisconsin	87.53	47.19	9.41	10.31	52.67
Minnesota	584.10	395.55	133.18	65.58	461.13
North Dakota	377.54	785.48	46.56	19.64	243.05
Montana	946.90	483.49	25.68	83.81	460.52
Idaho	83.34	236.38	5.67	23.09	52.21
Washington	698.71	952.78	49.51	149.49	480.66
Oregon	41.80	44.92	.....	2.42	11.26
Totals	2,819.92	2,945.79	270.01	354.34	1,761.50

Main Line	2,819.92
Branches	2,945.79
Second Track	270.01
Spurs	354.34
Yards and Sidings	1,761.50
Total	8,151.56

Mileage Not Included In Operated Mileage.

STATEMENT OF APRIL 12, 1909.

			Main Track.	Spurs, Yard Tracks and Sidings.
Lines in Manitoba			354.65	47.08
St. Paul Union Depot, Nor. Pac. 1/9 interest			0.06	0.95
Minnesota Transfer, Nor. Pac. 1/10 interest				7.97
Lake Superior Terminal & Transfer Railway Company, Nor. Pac. 1/3 interest				6.86
Northern Pacific Terminal Company of Oregon, Nor. Pac. 40% interest			0.37	8.28
Big Fork & International Falls Railway			34.01	3.84
Minnesota & International Railway, Nor. Pac. 70% interest			122.22	39.88
Spokane, Portland & Seattle Railway Company:				
Columbia Railway & Navigation Co. (Big Eddy to Columbus), included in S. P. & S. mileage, Vancouver to Kennewick				
Astoria & Columbia River Ry:				
Goble to Halladay		79.70		
Warrenton to Fort Stevens		3.80		
Columbia River & Northern Ry:				
Lyle to Goldendale		41.60		
Vancouver to Kennewick, Main Line	220.60			
Pasco to Snake River Junction Line	26.09			
Snake River Junction to Spokane Line	119.01			
Snake River Junction to Riparia Line	40.60	406.30		
		531.40		
Northern Pacific Ry. Co., ½ interest			265.70	
Total			777.01	111.86

Northern Pacific Railway Company.

General Summary of Valuation on Basis of Cost of Reproduction of Right of Way, Station Grounds and Terminals on Operated Lines.

State.	Acres.	Right of Way and Station Grounds.	Terminals.	Total.
Wisconsin	3,421.19	$ 414,619.00	$ 1,904,577.92	$ 2,319,196.92
Minnesota	23,929.73	4,098,555.12	24,509,679.46	28,608,234.58
North Dakota	31,876.00	8,848,155.50	2,719,611.46	11,567,766.96
Montana	51,803.82	5,505,316.50	3,807,885.78	9,313,202.28
Idaho	7,100.81	1,063,832.00	1,095,918.00	2,159,750.00
Washington	38,658.54	9,203,123.50	50,483,222.31	59,686,345.81
Oregon	1,378.55	558,080.70	481,305.00	1,039,385.70
Totals	158,168.64	$29,691,682.32	$85,002,199.93	$114,693,882.25

Grading, Clearing, Grubbing and Rip Rap.

Clearing	23,032 acres @ $80.00	$ 1,842,560.00
Grubbing	36,138 stations @ $16.50	596,277.00
Earth	178,999,469 cubic yards @ 33c	59,069,824.77
Loose Rock	12,660,470 cubic yards @ 50c	6,330,235.00
Solid Rock	13,019,855 cubic yards @ $1.10	14,321,840.50
Rip Rap	2,776,621 cubic yards @ $2.00	5,553,242.00
		$87,713,979.27

Cost Per Cubic Yard For Grading.

	Earth	Loose Rock	Solid Rock
Contract price, 600′ free haul	25c.	42c.	$1.00
Overhaul, extra bills, extra work by Company force, transportation of men, tools and plant	8c.	8c.	.10
Total	33c.	50c.	$1.10

Cost of Clearing Per Acre.

Contract price	$75.00
Extra bills, extra work by Company' forces, transportation of men, tools and plant, cutting additional trees outside Right of Way	5.00
Total	$80.00

Cost of Grubbing Per Station.

Contract price	$15.00
Extra bills, extra work by Company forces, transportation of men, tools and material	1.50
Total	$16.50

Cost of Rip Rap Per Cubic Yard.

Contract price	$ 1.75
Haul of material, extra bills, extra work by Company forces, transportation of men, tools and plant	.25
Total	$ 2.00

Tunnels.

Single track tunnels, lined with concrete.

Lineal Feet, April, 1909.

100–700′	700–1,200′	4,000′	10,000′
3,853′	2,936′	7,548′	9,833′

Double track tunnels, lined with concrete..... 2,354 lineal feet.
Single track tunnels, lined with wood..... 8,209 lineal feet.

Cost of Tunnels.

Concrete, 24 inches thick equals 4.1 cu. yds. per ft. of tunnel.

Concrete			$ 9.00
1¼ bbls. cement			2.50
Freight			1.00
Contract price			$12.50

Concrete, $12.50 x 4.1 equals $51.25 per lineal foot of tunnel.

100′ to 700′—wood—is $50.00 plus 10%. (See note.)	Equals	$55.00	
	Wood	25.00	
			$ 80.00
100′ to 700′—concrete	$50.00 plus 10%	$55.00	
	Concrete	51.25	
	Falsework	13.00	
			$119.25
700′ to 1,200′	$55.00 plus 10%	$60.50	
	Concrete	51.25	
	Falsework	13.00	
			$124.75
4,000′	$75.00 plus 10%	$82.50	
	Concrete	51.25	
	Falsework	13.00	
			$146.75
4,000′ to 10,000′	$90.00 plus 10%	$99.00	
	Concrete	51.25	
	Falsework	13.00	
			$163.25

DOUBLE TRACK, SHORT TUNNELS.

Concrete, 5.2 cu. yds. @ $12.50	$65.00	
Extra excavation, 11.5 cu. yds. @ $3.00	34.50	
Contract price, $50.00, plus 10%	55.00	
Falsework	13.00	
		$167.50

(NOTE)—10% is added to contract price for extra excavation.

ESTIMATED COST AS OF APRIL, 1909.

Tunnels 100′–700′ long, 3,853 feet @ $119.25	$ 459,470.25
Tunnels 700′–1,200′ long, 2,936 feet @ $124.75	366,266.00
Tunnels 4,000′ long, 7,548 feet @ $146.75	1,107,669.00
Tunnels 4,000′–10,000′ long, 9,833 feet @ $163.25	1,605,237.25
Double track tunnels lined with concrete:	
2,354 feet @ $167.50	394,295.00
Single track tunnels lined with wood:	
8,209 feet @ $80.00	656,720.00
	$4,589,657.50

BRIDGES, TRESTLES AND CULVERTS.

Item.	Cost.
SPECIAL BRIDGES.	
Bismarck Bridge	$ 1,140,129
Columbia River Bridge at Pasco	698,808
Snake River Bridge at Ainsworth	1,086,949
St. Louis Bay draw spans	700,000
Valley City Viaduct	728,216
Garrison to Missoula	913,356
St. Regis to Paradise	742,866
Huson Bridge	79,300
Culdesac to Grangeville	384,957
White Pine Hill Viaducts	167,888
New Bridges on Pacific Division	483,740
OTHER BRIDGES, TRESTLES AND CULVERTS:	
Steel Bridges and Foundations	7,806,760
Howe Trusses and Combination Spans	837,920
Pile and Timber Trestles	4,295,284
Reinforced Concrete Bridges	54,100
Stone and Concrete Arches	987,996
Stone Boxes	226,970
Timber Boxes	424,893
Cast Iron Pipe	1,174,866
Vitrified Pipe	369,895
Total	$23,304,893

STATEMENT OF DETAIL PRICES USED IN OBTAINING AVERAGE PRICE PER LINEAL FOOT OF BRIDGES, AS USED IN ESTIMATING VALUE OF AVERAGE BRIDGES ON THE NORTHERN PACIFIC SYSTEM.

BRIDGES:

Steel Superstructure:

I beams	3.3c per lb.	Falsework is included in the price per lb. Deck and freight are not included in the pound price, but are added as separate items for each bridge, freight being taken at full tariff rates.
Plate girders	4.12c per lb.	
Pin spans	4.67c per lb.	
Draw spans	truss price plus machinery.	
Average price on total weight of all classes including everything complete in place	4.81c per lb.	

HOWE TRUSSES:

Cast Iron	2.55c per lb.	Price for timber includes freight. Price for iron does not include freight. Both prices include labor of placing.
Wrought Iron	3.25c per lb.	
Timber	$48 per M.	

SUBSTRUCTURE:

All masonry and concrete taken at $12.00 to $18.00 per cubic yard, depending on amount of wet excavation required and kind of masonry used.

Average price per cubic yard taking yardage into total cost of masonry is $16.77.

Prices include all wet and dry excavation, labor, freight and all other items necessary for the substructure complete in place.

Timber cribs	$38.00 per M.
Piling below cut-off	45c per foot.

PILE AND TIMBER TRESTLES:

Average cost per foot in Minnesota	$12.30
Average cost per foot in North Dakota	9.88
Average cost per foot in Washington	8.00
Assumed for System	10.00

TIMBER BOXES:

Size	2′x 2′	2′x 3′	3′x 3′	4′x 3′	4′x 4′	4′x 5′	5′x 5′
Price	$2.75	$3.25	$3.75	$4.10	$4.50	$5.65	$6.75

STONE BOXES:

1′x 1′	$ 4.40	5′x 5′	$18.90
2′x 2′	6.60	5′x 6′	23.60
3′x 3′	8.80	6′x 6′	28.32
3′x 4′	12.00	7′x 7′	39.33
4′x 4′	13.70	8′x 8′	50.84
4′x 5′	18.40		

CONCRETE AND STONE ARCH CULVERTS:

4′	$ 9.46	12′	$ 66.34
5′	14.34	13′	79.02
6′	19.20	14′	91.70
7′	24.51	20′	126.00
8′	29.30	30′	164.88
10′	48.61		

CAST IRON PIPE:

60″	$17.90	30″	$6.01
54″	14.70	24″	3.89
48″	11.97	20″	3.49
42″	9.57	18″	3.39
40″	9.09	16″	3.16
36″	6.93	12″	2.33

Prices per foot are based on 1.7c per lb. for material, plus freight to bridge site, plus labor of laying.

VITRIFIED PIPE:

36″	$4.10
30″	3.40
24″	2.43
18″	1.66
16″	1.50
12″	1.40

Prices per foot include cost of material, freight to bridge site, and labor of laying.

TIES.

Main track, 3089.93 miles @ 3000 ties per mile exclusive of turnouts and crossings ..... 9,269,790 pcs.
Branches, Sidings and Yards, 5061.63 miles @ 2880 ties per mile exclusive of turnouts and crossings ..... 14,577,495 pcs.

Total ..... 23,847,285 pcs.

SWITCH TIES:
12,729 sets, averaging 3100 F. B. M. each.
CROSSING TIES:
100 sets, averaging 1200 F. B. M. each.
COST:

TRACK TIES:
Average price of ties including peeling and handling 55c
Transportation 200 miles @ 14c per 100 lbs. for an average weight of 180 lbs 25c

Total 80c

SWITCH TIES:
3100 F. B. M. @ $12.00 on the Coast $37.20
Transportation 1,000 miles @ 43c per 100 lbs. for an average weight of 10,230 lbs 43.99

Total ..... $81.19 per set.

CROSSING TIES:

1200 F.B.M. @ $12.00 on the Coast	$14.40	
Transportation 1,000 miles @ 43c per 100 lbs. for an average weight of 3,960 lbs	17.03	
Total	$31.43	
23,847,285 ties @ 80c		$19,077,828.00
12,729 sets of switch ties @ $81.19		1,033,467.51
100 sets of crossing ties @ $31.43		3,143.00
Total		$20,114,438.51

RAILS.

Main track, 3,089.93 miles @ 122.6 tons	378,825.42 tons.
Branches, Sidings and Yards, 5,061.63 miles @ 94.4 tons	477,817.87 tons.
Total	856,643.29 tons.
Price of rail, including two handlings in transit	$31.00 per ton.
Transportation on an average haul of 1,000 miles	13.00 per ton.
Total cost	$44.00 per ton.

856,643.29 tons @ $44.00, equals $37,692,304.76.

FROGS AND SWITCHES.

The total weight of rail is 856,643.29 tons for a total distance of 8,151.56 miles, which gives an average weight per mile, of 105 tons, or 67 lbs. per yard.

The cost of a 67 lb. turnout is:

Switch Stand	$12.00	
Switch Lamp	5.00	
Connecting Rod	1.65	
Split Switch	29.37	
Frog No. 9	31.25	
Guard Rails	8.58	
Rail Braces, 6 @ 11c	0.66	
	$88.51	
Handling in transit and store charges	5.00	
Transportation, an average of 1,000 miles, 1.4 tons @ $13.00, per ton	18.20	
Total	$111.71	
12,729 complete turnouts (except ties) @ $111.71, equals		$1,421,956.59
100 crossings (except ties) @ $250.00, equals		25,000.00
Total		$1,446,956.59

TRACK FASTENINGS.

ANGLE BARS:	
Main Line, 3,089.93 miles @ 7.134 tons	22,043.56 tons.
Branches, Sidings and Yards, 5,061.63 miles @ 6.635 tons	33,583.91 tons.
Total	55,627.47 tons.
TRACK BOLTS:	
Main Line, 3,089.93 miles @ 0.732 tons	2,261.83 tons.
Branches, Sidings and Yards, 5,061.63 miles @ 0.672 tons	3,401.42 tons.
Total	5,663.25 tons.
TRACK SPIKES:	
Main Line, 3,089.93 miles @ 3.240 tons	10,011.37 tons.
Branches, Sidings and Yards, 5,061.63 miles @ 3.192 tons	16,156.72 tons.
Total	26,168.09 tons.
ANGLE BARS:	
Price f. o. b. cars, St. Paul	$32.00 per ton.
Handling in transit	1.00 per ton.
Freight, average haul 1,000 miles	13.00 per ton.
Total	$46.00 per ton.
TRACK BOLTS:	
Price f. o. b. cars, St. Paul	$45.00 per ton.
Handling in transit	1.00 per ton.
Freight, average haul 1,000 miles	13.00 per ton.
Total	$59.00 per ton.
TRACK SPIKES:	
Price f. o. b. cars, St. Paul	$38.00 per ton.
Handling in transit	1.00 per ton.
Freight, average haul 1,000 miles	13.00 per ton.
Total	$52.00 per ton.
Angle bars, 55,627.47 tons @ $46.00	$2,558,863.62
Track bolts, 5,663.25 tons @ $59.00	334,131.75
Track spikes, 26,168.09 tons @ $52.00	1,360,740.68
Tie plates, 6,702,000 pcs. @ 15c	1,005,300.00
Rail braces, 400,000 pcs. @ 12c	48,000.00
	$5,307,036.05

BALLAST.

3,089.93 miles @ 3,000 cu. yds. per mile equals.....9,269,790 cubic yards
5,061.63 miles @ 1,500 cu. yds. per mile equals...7,592,445 cubic yards

Total .....16,862,235 cubic yards
16,862,235 cubic yards @ 66c equals.....$11,129,075.10

TRACKLAYING AND SURFACING.

8,151.56 miles @ $920.00 equals $7,499,435.20

FENCING RIGHT OF WAY.

Right of way fencing, including cattle guards.
Estimated cost to reproduce as of April, 1909.....$905,090.00

CROSSINGS AND SIGNS.

Estimated cost to reproduce as of April, 1909.....$202,921.00

INTERLOCKING PLANTS.

Estimated cost to reproduce as of April, 1909.....$138,950.00

SIGNAL APPARATUS.

Estimated cost to reproduce as of April, 1909.....$83,370.00

TELEGRAPH LINES AND APPURTENANCES.

TELEPHONE LINES AND APPURTENANCES.

Estimated cost of reproducing as of April, 1909.

Northern Pacific, exclusive pole line and wires.....$	860,941.43
Joint pole line and wires, Nor. Pac. one-half interest.....	647,705.12
Telegraph equipment.....	21,598.10
Telephone equipment	22,999.00
	$1,553,243.65

STATION BUILDING AND FIXTURES.

Ordinary brick buildings, exclusive of fixtures and platforms are estimated as $2.50 per square foot.

Ordinary frame buildings, exclusive of fixtures and platforms are estimated as $1.50 per square foot.

Ordinary two-story frame buildings, exclusive of fixtures and platforms are estimated at $2.50 per square foot.

Platforms and fixtures are estimated separately.

Twelve per cent is added to estimates to cover cost of transportation.

Special passenger stations are estimated at actual cost.

Estimated cost..... $3,408,025.00

GENERAL OFFICE BUILDINGS AND FIXTURES.

Includes General Office Buildings at St. Paul and Tacoma, including fixtures and equipment.
Estimated cost to reproduce as of April, 1909 .....$879,983.00

SHOPS, ENGINE HOUSES AND TURNTABLES.

Estimated cost of reproducing as of April, 1909.

Roundhouses, Brick, 7,345 stalls complete, including heating system and pipe systems and drainage @ $2,500	$1,835,000.00
Roundhouses, Frame, 128 stalls complete, including heating system and pipe systems and drainage @ $1,500	192,000.00
Shop buildings, Brick, one-story, complete, including heating system, pipe systems, machinery, foundations and drainage—1,201,755 sq. ft. @ $1.75	2,103,071.25
Shop buildings, Brick, two-story, complete, including heating system, pipe systems, machinery, foundations and drainage—83,700 sq. ft. @ $3.00	251,100.00
Shop buildings, Frame, one-story, complete, including heating system, pipe systems, machinery, foundations and drainage—267,680 sq. ft. @ $1.25	364,600.00
Turntables, complete, including tractors—73 pieces @ $7,000	511,000.00
	$5,256,771.25
Transportation charges 12 %	630,812.52
	$5,887,583.77

SHOP MACHINERY AND TOOLS.

Estimated cost to reproduce as of April, 1909 ..... $1,383,306.00

WATER STATIONS.

Water stations, including tanks, pumphouses, standpipes, wells, pipe lines and pumping machinery.

Estimated cost to reproduce as of April, 1909 ..... $2,642,286.90

FUEL STATIONS.

Includes coal docks of all classes and cost of machinery.

Estimated cost to reproduce as of April, 1909 ..... $803,215.00

DOCK AND WHARF PROPERTY.

Includes wharves, docks and warehouses thereon.

Estimated cost to reproduce as of April, 1909 ..... $4,708,281.00

MISCELLANEOUS STRUCTURES.

Including stockyards, track scales, snow fences, section houses, ice houses, telegraph offices, tool houses, dwelling houses and other miscellaneous buildings and fixtures.

Estimated cost $2,882,586.70

JOINT WORK AT SEATTLE.

Includes Northern Pacific Railway Company's one-half interest in Seattle Passenger Station, and Passenger Station tracks; also one-half interest in the tunnel.

Estimated cost to reproduce as of April, 1909, exclusive of the cost of real estate and grading $1,332,199.61

STEAM LOCOMOTIVES.

Estimated cost to reproduce as of April, 1909 ..... $18,567,911.57

PASSENGER TRAIN CARS.

Estimated cost to reproduce as of April, 1909 ..... $7,480,602.00

FREIGHT TRAIN CARS.

Estimated cost to reproduce as of April, 1909 ..... $36,593,737.00

MISCELLANEOUS EQUIPMENT.

Estimated cost to reproduce as of April, 1909 ..... $ 1,978,710.00

FLOATING EQUIPMENT.

Estimated cost to reproduce as of April, 1909 ..... $ 612,400.00

MECHANICAL ENGINEERING.

One per cent of estimated cost as of April, 1909, of the following items:

Steam Locomotives	$18,567,911.57
Passenger Train Cars	7,480,602.00
Freight Train Cars	36,593,737.00
Miscellaneous Equipment	1,978,710.00
Floating Equipment	612,400.00
	$65,233,360.57

1% of $65,233,360.57 equals $652,333.61.

INTEREST.

Based on reconstructing the whole system in 12 years.

TERMINALS:

The purchase of the following terminals to be made during the first three years:

Superior, Wisconsin	$ 1,904,577.92
Duluth, Minnesota	5,477,377.14
St. Paul, Minnesota	12,156,343.89
Minneapolis, Minnesota	5,545,328.93
Fargo, North Dakota	1,066,054.68
Billings, Montana	1,378,498.90
Helena, Montana	233,456.00
Missoula, Montana	947,116.62
Butte, Montana	1,248,814.26
Spokane, Washington	8,109,128.62
North Yakima, Washington	1,275,182.00
Tacoma, Washington	11,525,728.89
Seattle, Washington	26,814,488.18
Portland, Oregon	481,305.00
	$78,163,401.03

The above amounts to be expended with an equal sum each year. The interest at the end of the third year will equal 1½ years interest of the total amount, and after twelve years, 10½ years interest which, at 6%, is equal to 63% for one year.

63% of $78,163,401.03		$49,242,942.65
Total estimated cost of terminals	$85,002,199.93	
Purchased during first three years	78,163,401.03	
Balance	$ 6,838,798.90	

Balance of terminals to be purchased during years 4 to 10, inclusive, the interest of which, at 6% for 5½ years, equals 33% for one year.

33% of $6,838,798.90	2,256,803.65

Cost of Right of Way and Station Grounds, $29,691,682.32.

Right of Way and Station Grounds to be acquired during years 3 to 10, inclusive, interest at 6% for six years or 36% for one year:

36% of $29,691,682.32	10,689,005.64

Items 3 to 26, inclusive, $225,608,817.61:

To be extended during years 3 to 12, inclusive. Interest at 6% for 5 years, or 30% for one year:

30% of $225,608,817.61	67,682,645.28

Equipment, items 27 to 31, inclusive, $65,233,360.57:

To be acquired during years 5 to 12, inclusive. Interest at 6% for 4 years, or 24% for one year:

24% of $65,233,360.57	15,656,006.54
Engineering, item 1, during 12 years; interest at 6% for 6 years, or 36% of $10,209,081.00	3,675,269.16
Mechanical engineering, item 32, to cover years 3 to 12, inclusive. Interest at 6% for 5 years or 30% of $652,333.61	195,700.08
Contingencies, item 33, covering 12 years. Interest at 6% for 6 years, or 36% of $41,639,747.50	14,990,309.10
Total interest	$164,388,682.09

METHOD OF CONSTRUCTION.

Years 1, 2, 3. Complete purchase of principal terminals, make progress in location of main lines and get contracts ready for construction.

End of year 5. Operate main line in temporary condition for benefit of traffic:

St. Paul to Fargo; St. Paul to Duluth, and Duluth to Staples	577 miles.

End of year 6. Operate main line in temporary condition for benefit of traffic:

Fargo to Livingston	795 miles.

End of year 7. Operate main line in temporary condition for benefit of traffic:
Livingston to Helena and Butte..... 256 miles.
End of year 8. Operate main line in temporary condition for benefit of traffic:
Butte and Helena to Spokane..... 526 miles.
End of year 9. Operate main line in temporary condition for benefit of traffic:
Spokane to Tacoma, Seattle and Portland..... 720 miles.
End of Year 10. Operate branches, sidings and yards in temporary condition for benefit of traffic:
See map.....1,900 miles.
End of year 11. Operate branches, sidings and yards in temporary condition for benefit of traffic:
See map.....1,900 miles.
End of year 12. Complete all work, including 1,614 miles of branch lines and sidetracks.

Q. Previous to the making of this statement, had you had any experience in the preparation of similar statements in other cases?

A. Yes, sir.

Q. Just state what that experience was and in what cases.

A. I first made an approximate estimate as of April 1, 1906, I think, in connection with the Spokane rate case.

Q. March, 1907, wasn't it?

A. No, sir, I think March, 1906.

Q. If it was made in connection with the Spokane rate case it was made in March, 1907. I am quite sure, Mr. Darling; wasn't it?

A. Possibly it was.

Q. It was prepared about the time of the hearing in Chicago before Commissioners Prouty and Harlan?

A. Yes, sir.

Q. That was in March, 1907.

A. Well, that is my mistake. I made another estimate in connection with the Minnesota rate case. That was April 30, 1908.

Q. And in the preparation of those estimates, what did you do in making them up? How extensive a survey of the property or an examination of the elements of cost of the property did you make?

A. With the exception of the grading estimates, it was made almost entirely from our records; I might say also with the exception of ballasting. But in the present estimate and the estimate made for the Minnesota rate case, everything

was taken from our record,, the grading being taken from the profiles of which we have a record.

Q. This statement, Complainants' Exhibit 4, as I understand it, contains, as the first page of it, a summary of all the items that are shown more in detail in the following pages?

A. Yes, sir.

Q. And on that first page is summarized the estimated present cost of reproducing the Northern Pacific Railway as of the present date?

A. Yes, sir.

The Master: I suppose you mean the track?

Mr. Donnelly: No, the entire property.

Q. You include in this estimate the property that is covered in Mr. Cooper's testimony?

A. Yes, sir.

Q. And you accept as the basis of the cost of acquiring, or, to use the technical term, reproducing that property,—you accept the estimates submitted by Mr. Cooper in his testimony?

A. Yes, sir.

Q. That is the basis of the statement?

A. Yes, sir.

Q. That shows a total cost of $622,425,904.63, for the present cost of reproducing the Northern Pacific?

A. Yes, sir.

Q. The items that follow cover mileage that is not used in connection with the Northern Pacific Railway proper at this time; is that correct?

A. Yes, sir. It is property owned or partly owned by the Northern Pacific but not operated by the Northern Pacific.

Q. Now, take these items in detail, Mr. Darling. At the head of the statement you have a statement of the operated mileage, 8,151.56 miles. That is the mileage that is used entirely in connection with the operation of the Northern Pacific?

A. Yes, sir.

Q. The items that follow the total of $622,000,000, on the first page of the statement, represent other mileage than that which is summarized at the head of the statement?

A. Yes, sir, with one exception.

Q. That is to say, in the 8,151 miles you do not include the lines in Manitoba?

A. No, sir.

Q. Or the Northern Pacific interests in the Spokane, Portland & Seattle?

A. No, sir.

Q. Or its interest in these terminal companies?

A. No, sir. But there is one item that is included in that mileage, which is the Duluth Union Depot property.

Q. There is one item which is at the bottom of the page?

A. Yes, sir. That is included in the mileage above.

Q. And how much is that mileage, do you know?

A. Yes, sir, I can tell you. 25/100 miles of main line, and 2.32 miles of siding.

Q. About 2½ miles, then?

A. Yes, sir.

Q. Of main line and siding?

A. Yes.

Q. That is the only item?

A. Yes, sir. Except the lines that are under construction. That is Northern Pacific mileage, but it is not included in this mileage, except as we are operating it. This is for work now under construction, including changes of line, changes of grade, and reconstruction of the line between Missoula and Garrison.

Q. Is any portion of the mileage under construction included in the 8,151 miles?

A. Yes, sir.

Q. Can you state definitely how much of it?

A. There are about 85 miles of main line; I can't tell you how many sidings without looking up the details.

Q. That is, 85 miles of main line and this indeterminate amount of sidings are included in the items grouped at the bottom of the page as "lines under construction"?

A. Yes, sir. But they are also being operated.

Q. But the various items that follow the statement of the mileage at the top of the page, the items numbered from 1 to 34, inclusive, do not take into consideration any portion of the 85 miles of line?

A. Yes, sir, they take into consideration the portion of the line as it was built and as it is being operated.

Q. What I want to develop, Mr. Darling, is, that there is no duplication here.

A. No, sir.

Q. That the amount that is represented as the cost of reproducing the lines under construction, $9,019,283.45, no portion of it is embodied in any of the items that precede the total of 622 million?

A. No, sir. I think I can illustrate that by taking the work we are doing between Auburn and Meeker Junction in Washington. The work there consists of raising the grade of the old line and putting in the second track. Now, the original construction is under these items between 1 and 34. That is completed work. But the work that we are doing is underway, including the double track and the raising of the grade; and that is included in the item of "lines under construction."

Q. And not included above?

A. No, sir.

Q. Take the first item, then, in Exhibit 4, that appears to be "engineering, 3 per cent. of items 2 to 26, inclusive," making a total of 10 million dollars. Now, how did you arrive at that figure, 3 per cent.?

A. That is the usual way of computing engineering, and experience shows that is pretty nearly what it costs. But generally we include three per cent. for equipment—sometimes we do not, when we get a very close estimate, and we have considered this estimate is so close that I have not included engineering equipment, but I have included an item of mechanical engineering, covering a portion of the equipment.

Q. "Mechanical engineering," however, that appears as Items 32, is independent of the general engineering charge at the head of the sheet?

A. Yes, sir.

Q. And this 3 per cent. for engineering covers Items 1 to 26, which items exclude all of the cost of the equipment?

A. Yes, sir.

Q. Is it usual to include as the cost of engineering a percentage of 3 per cent. of all those items, 1 to 26?

A. Yes, sir.

Q. The second item, "right-of-way, station grounds and terminals on operated lines," $114,693,882.25, that, you have already testified, you have taken from Mr. Cooper's testimony?

A. Yes, sir.

Q. And from the estimate as prepared by him?

A. Yes, sir.

Q. The third item, "grading, clearing and grubbing," beginning on page 3 of the statement; if I understand it correctly, there is a detailed statement showing how that total of 87 millions of dollars, which represents the total cost of that work, was arrived at, and in that detailed statement the

first item is "Clearing, 23,032 acres, at $80 per acre." How did you arrive at the number of acres there?

A. That is from our records.

Q. And the price per acre?

A. The price per acre is what I assume as a fair contract cost of doing that work, the original cost being $75 per acre, and the work done since—work done by the company force, including extra bills, extra work by company forces, transportation of men, tools and plant, cutting of additional trees outside right-of-way, a total of $5 per acre, making a grand total of $80 per acre which it would cost the railroad company.

Q. So, the contract price of $75 per acre does not represent all that it costs the railroad company?

A. No, sir.

Q. The additional items, you think, make $80 a fair charge for that?

A. Yes, sir.

Q. That is based on your experience, is it?

A. Yes, sir.

Q. The grubbing, 36,138 stations, at $16.50. Is that number of stations taken from your records?

A. Yes, sir.

Q. And how is the cost arrived at?

A. That is assumed to cost $16.50 per station, and is made up of our ordinary contract price of $15 per station, plus extra bills, extra work by company forces, transportation of men, tools and material, amounting to $1.50, or a total of $16.50 per station.

Q. Mr. Holden suggests that I ask you what a "station" means.

A. A station means a distance of 100 feet for the width covered by the roadbed.

Q. A distance of 100 feet along the line of the road?

A. Along the line of the road, and for the full width of the roadbed.

Q. Whatever that width may be?

A. Yes, sir.

Q. Greater or less, according to the character of the embankment?

A. Or whatever it is required to grub under the specifications. That is generally limited by the height of the embankment or the depth of the cut.

Q. The next item is earth. That means, I suppose, earth excavation, number of cubic yards of material that would be described as "earth" in the contract?

A. That means every kind of material encountered except loose rock and solid rock, whether it is clay or cement gravel or hard-pan, or anything of that kind—all kinds of material except loose rock and solid rock.

Q. Is it usual to make a separate division of hard-pan?

A. Sometimes, yes, sir.

Q. But you have included in the earth excavation whatever would fall under the description of hard-pan?

A. Yes, sir, I have in this estimate, for the reason that nearly all of our work has been done in that way.

Q. The number of yards that it would be required to move in order to reproduce the Northern Pacific system, how is that arrived at?

A. That was taken from our records and profiles.

Q. And the price was obtained how?

A. The price is entirely a matter of judgment as to what that work would cost, based on what work is worth and what work has cost us heretofore.

Q. Can you give to the Master some instance of actual prices paid in the last year or two, which would show the fairness of the price?

A. Yes, sir, I have a statement here; in fact, I have two statements. One shows—

Mr. Donnelly: As long as they are going to go in evidence we had better have those marked.

A paper was marked Complainants' Exhibit 5 (Darling).

COMPL

GRADING DONE DURING YEARS 1879 TO 1907, SHOWING UNIT PRIC

STATE	MILEAGE	GRADING.			
		EARTH			
		Cubic yards	Contract cost.	Ave. cont. cost yd.	
Wisconsin	78.64	1,482,160	$ 367,487.48	.247	
Minnesota	236.845	4,162,122	927,952.01	.223	
North Dakota	805.994	12,295,021	2,076,359.76	.169	
Montana	1,091.066	11,076,046	2,594,867.88	.234	1,
Idaho	238.784	2,557,669	470,326.26	.184	2,
Washington	733.619	12,741,814	2,603,080.81	.204	3,
Oregon	38.55	677,341	118,534.67	.175	
Totals	3,223.498	44,992,173	$ 9,158,608.87	.203	$

COMPLAINANT'S EXHIBIT 5 (DARLING).

GRADING DONE DURING YEARS 1879 TO 1907, SHOWING UNIT PRICES AND AMOUNTS PAID CONTRACTORS, NOT INCLUDING EXTRA BILLS AND FORCE ACCOUNT WORK:

	MILEAGE	GRADING.			CLASSIFIED QUANTITIES.						GRADING—TOTAL QUANTITIES		
		EARTH			LOOSE ROCK			SOLID ROCK.					
		Cubic yards	Contract cost.	Ave. cont. cost yd.	Cubic yards.	Contract cost.	Ave. cont. cost yd.	Cubic yards.	Contract cost.	Ave. cont. cost yd.	Quantities cu. yds.	Contract cost.	Ave. cost.
.....	78.64	1,482,160	$ 367,487.48	.247	922	$ 932.57	1.011	5,[illegible]36	$ 7,993.05	1.535	1,488,289	$ 376,413.10	.253
.....	236.845	4,162,122	927,952.01	.223	76,800	33,784.48	.440	19,376	17,479.40	.902	4,258,299	979,215.89	.230
.....	805.994	12,295,021	2,076,359.76	.169	500,635	201,761.33	.403	76,817	68,510.70	.893	12,872,474	2,346,631.79	.182
.....	1,091.066	11,076,046	2,594,867.88	.234	1,926,519	999,684.58	.514	2,626,364	2,984,772.53	1.098	15,628,929	6,579,324.99	.421
.....	238.784	2,557,669	470,326.26	.184	2,071,705	779,253.76	.376	2,205,665	1,969,775.84	.893	6,835,039	3,219,855.86	.471
.....	733.619	12,741,814	2,603,080.81	.204	3,985,174	1,651,822.62	.415	1,455,703	1,487,014.40	1.022	18,183,692	5,741,917.83	.316
.....	38.55	677,341	118,534.67	.175	30,194	24,155.20	.80	57,991	81,187.40	1.40	765,526	223,877.27	.293
.....	3,223.498	44,992,173	$ 9,158,608.87	.203	8,591,949	$ 3,691,394.54	.430	6,447,122	$ 6,616,733.32	1.026	60,032,248	$ 19,467,236.73	.324

Q. State what Complainants' Exhibit 5 shows.

A. That shows the grading done during the years 1879 to 1907, of which we have a record of the contracts, showing unit prices that we paid the contractors, the amounts paid them, but not including extra bills, force account work, and work done by the railway company. This covers a total mileage of 3,223½ miles, and the total amount of grading, including earth, loose rock and solid rock, 60,032,248 cubic yards. The average prices paid for earth to contractors, on 45 million yards, was 20.3 cents. The average price paid for loose rock, 8,591,949 cubic yards, was 43 cents. The average price paid for solid rock, 6,616,733 yards, was $1,026. Making a general average price for 60,000,000 yards of 32.4 cents actually paid the contractor.

Q. Now, the average price paid for earth excavation, including in that hard-pan, I suppose, in this Exhibit 5,—hard-pan is included?

A. Yes, sir.

Q. Just as it is in your statement of estimated cost of reproducing the whole system?

A. Well, not so much so. There is more of that hard-pan included in loose rock. The original loose rock was made to cover a portion of the hard-pan.

Q. In which statement?

A. In this statement that you have.

Q. In Complainants' Exhibit 5?

A. Yes. Our old specifications provided that under the head of loose rock we should classify the heavy clays as loose rock.

Q. So that this average of 20.3 cents per cubic yard, this average cost of earth excavation, as shown in Complainants' Exhibit 5, represents less hard-pan than is shown in the general exhibit, Complainants' Exhibit 4?

A. Yes, sir.

Q. And is the cost of removing hard-pan more or less than earth?

A. Oh, it is more.

Q. About what is the relative cost of the two items, where they are kept separate?

A. From 18 to 32.

Q. That is, 18 for earth and 32 for hard-pan?

A. 18 to 20 for earth and 32 to 35 for hard-pan, depending on conditions.

Q. What elements did you say were excluded in arriving

at this average of 20.3 cents? What elements are not taken into consideration that are included in the other?

A. All force account work, all extra bills, all transportation of men, tools, plant and material, all work done by the company, all material furnished the contractors by the company.

Q. And the additional cost of those additional items brings the total average up to 33 cents; that is, taking into consideration also the inclusion of hard-pan to a greater extent, it brings this average up to the 33 cents that is shown in the statement Complainants' Exhibit 4?

A. The average for earth, yes, sir.

Q. The point I am developing, Mr. Darling, is this: you show on Exhibit 5 an average cost of 20.3 cents per cubic yard for earth excavation.

A. Yes, sir.

Q. In your statement of the cost of reproduction you show 33 cents per cubic yard.

A. Yes, sir.

Q. Now, I want to have you explain the difference. What elements are included in the latter that are not in the former, in order to bring up that average?

A. The principal reason for bringing up the average today, for earth, is that it costs more to move earth than it did at the time this work was done. It costs a little bit less to move rock, because with the improved machinery which we have and the improved method of doing the work, we can do the rock for a little less price than we could originally. But this old main line work, consisting of earth, costs more to move today than it did at the time this was done, for the reason that the improved machinery takes care of a different class of material, that is, material under different conditions. For instance, the work done at the time these prices were made was very light, very light cuts and very light fills, and was done with scrapers and wheel-scrapers, and today we are doing the work with steam-shovels, but the work is heavier work. They are big cuts and big fills where they can afford to put a steam-shovel in. Therefore, they can do it at a little less price, perhaps, for rock. But the cuts are so big that the earth costs more.

Q. So, in addition to that, the 33 cents does cover all the elements of cost?

A. Yes, sir. That is shown more fully in another statement there.

Paper marked Complainants' Exhibit 6 (Darling).

COMPLAINANT'S EXHIBIT 6 (DARLING).

NORTHERN PACIFIC RAILWAY.

COST OF GRADING DONE DURING YEARS 1900 TO 1909, INCLUSIVE.

Year Built	Line	Mileage	Earth		Hard Pan		Loose Rock		Solid Rock		Total Yardage	Av. Cont. price	Total Charges	Av. Cost per yd.
			Cubic yards.	Av. price	Cubic yards	Av. price	Cubic yards	Av. price	Cubic yards	Av. price				
1900	Palmer Jct.-Auburn	21.664	982,358	0.25			118,161	0.36	13,201	0.90	1,113,720	0.268	$ 372,244.78	0.334
1901	Oberon-Esmond	28.073	393,873	0.136							393,873	0.135	65,859.58	0.167
1901	Arlington-Barrington	28.085	654,221	0.245			19,311	0.40	40,590	0.75	714,122	0.278	238,499.63	0.334
1902	Bemidji-Blackduck	25.745	798,832	0.255			58,025	0.45			856,857	0.268	282,264.47	0.329
1902	Bowden-Denhoff	26.479	621,738	0.16							621,788	0.16	157,237.93	0.253
1902	McKenzie-Linton	45.318	1,016,185	0.17			109,134	0.35	21,968	0.80	1,147,287	0.199	263,474.78	0.229
1903	Blackduck-Bridgie	16.248	281,738	0.34			322	0.50	200	1.50	282,260	0.341	109,234.92	0.387
1905	Bridgie-Big Fork	31.062	355,541	0.245			154	0.364			355,695	0.245	131,070.51	0.368
1905	Edgeley Jct.-Streeter	39.906	1,005,174	0.167			144,309	0.35			1,149,483	0.190	254,818.16	0.222
1905	Denhoff-Turtle Lake	30.529	677,221	0.165			104,223	0.40	106	0.80	781,550	0.196	182,485.08	0.233
1906	Sunnyside Jct.-Grandview	20.093	195,732	0.172							195,732	0.172	44,375.98	0.227
1906	Hoquiam-Moclips	27.891	579,560	0.273			25,847	0.40	344	0.80	605,851	0.279	326,043.84	0.538
1907	Wadena Jct.-Lake Park	57.26	1,259,910	0.229			80	0.38			1,259,990	0.228	376,678.80	0.298
1908	Lake Park-Glyndon	53.66	1,138,884	0.229			272,410	0.404	700	0.936	1,386,914	0.264	564,057.11	0.407
1908	Alta-Berea	10.00	725,994	0.295							725,994	0.295	252,491.26	0.347
1908	Livingston-Muir	12.314	263,200	0.211	311,592	0.361	8,150	0.412	773,218	0.927	1,356,160	0.556	1,043,654.29	0.77
1908	Muir-Bozeman	11.915	69,188	0.212	20,862	0.361	7,938	0.464	50,117	1.018	148,105	0.504	101,736.75	0.637
1909	White Pine Hill	32.89	467,845	0.234	950,645	0.405	372,426	0.464	818,051	0.980	2,608,967	0.563	1,724,793.28	0.661
1909	S. P. & S. Ry	255.80	5,664,114	0.202	2,610,387	0.361	3,300,907	0.454	6,924,443	0.883	18,067,851	0.515	11,750,969.76	0.549
1909	Vancouver-Kalama	29.61	820,214	0.247	984,612	0.393	65,253	0.474	456,098	0.943	2,326,177	0.452	1,278,941.72	0.55
1909	St. Regis-Paradise	24.99	571,943	0.216	853,140	0.37	327,925	0.389	265,203	0.915	2,018,211	0.382	1,068,491.28	0.529
	Total		18,518,535	0.21	5,731,238	0.375	4,934,575	0.439	8,932,239	0.898	38,116,587	0.428	$ 20,589,422.91	0.511

The Column "Total Charges" shows all Charges against "Grading" for each of these Lines from the "Construction Books," at the time each line was turned over for operation.

NOTE.—Cost of Grading done by Railway Company forces not included in the above list:

	Earth	Cost	Ave. Price per cu. yd.
Bridgie to Big Fork	64,008 cu. yds.	$ 20,501.29	32.0c
Wadena Junction to Lake Park	512,335 cu. yds.	325,793.79	63.5c
Lake Park to Glyndon	4,975,895 cu. yds.	1,472,044.00	29.6c
Total	5,552,238 cu. yds.	$1,818,339.08	32.75c

Q. Calling your attention to Complainants' Exhibit 6, which is the next statement on your list, that shows the cost of the grading done by the Northern Pacific during the years 1900 to 1909, inclusive.

A. Yes, sir.

Q. Those are actual prices paid?

A. Yes, sir.

Q. And in that statement, instead of combining the earth and hard-pan, you have kept those two items separate?

A. Wherever we have let contracts with the hard-pan classification clause in it.

Q. At least that has been done from 1908 on?

A. Yes, sir.

Q. Now, taking that statement, which shows the prices actually paid during this period, what has been the average cost or the average price paid per cubic yard for the removal of earth?

A. 21 cents.

Q. And hard pan?

A. 37-1/2 cents.

Q. Loose rock?

A. 43.9 cents.

Q. And solid rock?

A. 89.8 cents.

Q. That covers a total yardage of how much?

A. 38,116,587, at an average price of 42.8 cents.

Q. Are there any elements of cost to which the railway company is, as a practical matter, subjected in connection with the grading that is shown on Complainants' Exhibit 6, which are not shown in the statement itself?

A. Yes, sir.

Q. What are those elements?

A. They are shown in the next to the last column under the head of "total charges."

Q. Oh, yes. Those charges contain the prices paid contractors plus any extra bills which we may pay them, work done by force account, any and all transportation of men, tools, outfits, plant and material, and work done by the company which the contractors would not do under their contract and for which we had no definite prices. That is given in the last column under "average cost per yard," and is shown by the various contracts. The total average price is 51.1 cents, that is what it has cost the company, and for which the company paid the contractor 42.8 cents. Showing that to all

our contract prices we must add at least a common factor of about 8.3 cents per cubic yard.

Q. And that actually is added to the average prices shown on page 3 of your detailed statement?

A. Yes, sir. You will find in the detailed statement that I have taken earth at 25 cents per cubic yard, because it covers all classes of material, both earth and hard-pan.

Q. And you have added to that 25 cents, 8 cents as representing the additional charge per yard growing out of these other items which you have just enumerated.

A. Just for earth and for hard-pan and for loose rock, but for solid rock I have added 10 cents for the reason that solid rock is generally hauled a longer distance and there is more extra work in connection with it.

Q. The next item on the list is "tunnel," the tunnel item showing a total cost for reproducing on the Northern Pacific of $4,589,657.50. From what records or data was that made up?

A. Those are from our records, which are very complete, giving the length of each tunnel and the size of it.

Q. The character of construction?

A. The character of construction, yes, sir.

Q. And the cost of reproducing it, based on your own knowledge of the present prices?

A. Yes, sir.

Q. The next item is "Bridges, trestles, and culverts."

A. That is made also from our records.

Q. Have you any other additional exhibits showing the actual cost of construction of bridges and culverts from which the accuracy of that estimated cost of reproduction can be to a certain extent checked?

A. Yes, sir. I have given on sheet 5-A here the unit prices which we used as a basis for estimating all our bridge work. I have made up a statement showing actual prices paid for piling, for concrete work—

Q. Just take the statement that you speak of. I want to have it put in.

Paper marked Complainants' Exhibit 7 (Darling).

COMPLAIN

ACTUAL COS
EASTERN SECTION OF THE NORTH
OF THE

DESCRIPTION.	Total lin. ft. of piling below cut-off	Total cubic yards of concrete	To weig stee pou
Item No. 1. 10 I-Beam bridges and one deck plate girder on the Dakota Div., put in 1900 to 1908. Work done by division forces. Traffic maintained. Average depth wet excavation, 4'.....	10,442	1,786	73
Item No. 2. 15 I-Beam bridges and two deck plate girders on the Yellowstone Div., put in 1899 to 1907. Conditions same as Item No. 1.....	No piling.	2,205	65
Item No. 3. Mississippi River bridge at Brainerd. 3 140' deck pin spans, 1 60' and 1 85' deck pl. girders. Traffic maintained. Average depth wet excavation, 5' Substructure put in by Construction Dept. Erection contracted, 1900.....	8,650	1,826	85
Item No. 4. Mississippi River bridge at Little Falls, 5 100' deck plate girders. Average depth of wet excavation, 10'. Work done by Construction Dept., 1899.....	2,400	1,184	70
Item No. 5. Double tracking 7 deck plate girder bridges, between Wadena and Moorhead. Piers extended and second track superstructure placed. Traffic maintained on old line only. Average depth of wet excavation, 4'. Work done by division forces, 1906...	12,590	1,548	78
	TOTALS.		
	34,082	8,549	3,73

LAINANT'S EXHIBIT 7 (DARLING.)

COSTS OF VARIOUS BRIDGES ON THE
RTHERN PACIFIC RY., COMPILED FROM DETAIL COST REPORTS
HE MEN IN CHARGE OF THE WORK.

Total weight of steel in pounds.	Cost per lin. ft. of piling below cut-off.		Cost per cu. yard of concrete, including excavation.		Cost per pound of metal in superstructure, including deck and painting.		REMARKS.
	Exclusive of freight.	Including freight.	Exclusive of freight.	Including freight.	Exclusive of freight.	Including freight.	
735,535	33c.	45c.	$12.84	$14.51	3.28c.	3.49c.	Records on this item includes piling with concrete costs. Costs have been separated by assuming piling at figures shown.
652,914	.....	.....	$13.39	$15.81	3.73c. 4.11c.	4.13c. 4.59c.	I-Beam spans. Girder spans.
852,649	37.5c.	54.3c.	$14.37	$16.54	5.29c.	5.64c.	Costs taken from detailed report of Prof. Constant, engineer in charge of the work.
707,000	34c.	52c.	$16.81	$19.44	4.17c.	4.57c.	
783,500	45c.	50c.	$11.75	$12.45	3.44c.	3.65c.	
	AVERAGING ALL ITEMS.						
3,731,598	37.6c.	50.3c.	$13.83	$15.75	4.c.	4.30.	

Q. Now turn to sheet 5-A of the detailed statement, Complainants' Exhibit 4. As I understand it, those sheets purport to show in detail the cost of reproducing the bridges of the Northern Pacific system.

A. Sheet 5 shows the actual cost of reproducing; sheets 5-A and 5-B show the unit prices from which those estimates were made.

Q. Now turn to Exhibit 7, which represents, as I understand you, the actual prices paid for the construction of various bridges on the eastern end of the Northern Pacific. Will you contrast the actual prices paid, as shown on Exhibit 7, with the unit prices as shown on sheets 5-A and 5-B of Exhibit 4?

A. Under the heading of "Bridges," I beams are estimated at 3.3 cents per pound. The actual cost, under Item No. 1, of 10 I beam bridges and one deck plate girder on the Dakota Division put in 1900 to 1908, work done by division forces, cost 3.49 cents per pound including freight.

Q. That is a little more than your estimated cost?

A. Yes, sir. Item No. 2, 15 I beam bridges and two deck plate girders, cost complete 4.13 cents for the I beams and 4.59 cents for the deck plate girders.

Q. As contrasted with the same item of 3.3 cents?

A. Yes, sir, and plate girders 4.12 cents. Item No. 3, Mississippi River bridge at Brainerd, three 140-foot deck pin spans, one 60-foot and one 85-foot deck plate girders, erected in 1900, cost 5.64 cents per pound. Item No. 4, Mississippi River bridge at Little Falls, five 100-foot deck plate girders, built in 1889, cost 4.57 cents. For that same item I have estimated 4.12 cents. Item No. 5, double tracking 7 deck plate girder bridges between Wadena and Moorhead, 3.65 cents per pound.

Q. For what item—the plate girders?

A. Plate girders. The average of all these items is 4.30 cents, for which we have items of 3.3 cents for I beams and 4.12 cents for plate girders. I have a great many more bridges on another sheet.

Q. Well, before we leave this sheet, the prices as shown on sheets 5-A and 5-B include transportation?

A. Yes, sir.

Q. And everything right in place?

A. Yes, sir.

Q. Now, right there on that element of transportation, will

you state at what rate you have computed the transportation in making up this estimate?

A. Tariff rates.

Q. At tariff rates?

A. Yes, sir.

Mr. Teal: You estimated the freight on the property that is used by the railway company at tariff rates?

The Witness: Yes, sir.

Q. And that differs in that respect from previous estimates in what way?

A. In that I used 4/10 of a cent per ton per mile.

Q. Of the previous estimate?

A. Yes.

Q. Taking the next item in the detailed statement, Howe trusses, have you any comparisons to make there?

A. No, I have no records here of Howe trusses. We have built very few lately.

Q. Have you anything to show the actual cost of any of these items that are enumerated in sheets 5-A and 5-B other than those which you have already named?

A. Yes, sir, substructure.

Q. Just show how the actual cost of that compares with your estimated cost here.

A. I have some records on this same exhibit, showing that on Item No. 1 the average cost was $14.51 a cubic yard. Take Item No. 2: $15.81 per cubic yard. Item No. 3—

Q. Now, just right there. Per cubic yard of material removed?

A. Of concrete.

Q. Of concrete?

A. Of concrete in the substructure. Item No. 3, $16.54. Item No. 4, $19.44. Item No. 5, $12.45.

Q. Those items contrast with what in the estimate?

A. Under the head of "Substructure," all masonry and concrete taken at $12 to $18 per cubic yard, depending on conditions.

Q. And those prices include the transportation?

A. Yes, sir.

Q. Does the actual cost, as shown on the blue-print Exhibit 7, include transportation?

A. Yes, sir.

Mr. Teal: That is, the regular tariff?

The Witness: The regular tariff rate, yes, sir.

Q. The regular tariff shown on the blue-print, is it?

A. Yes, sir.

Q. Are there any other comparisons in the blue-print?

A. Yes, sir. Piling for foundations below the cut-off, under the masonry.

Q. How is that item described in the detailed statement?

A. Cost per lineal foot of piling below cut-off.

Q. It does not appear in my detailed statement.

A. That appears on the blue-print—cost per lineal foot of piling below cut-off.

Q. What is the corresponding designation of that in Exhibit 4?

A. In the middle of page 5-A, Piling below cut-off, 45 cents per foot. The actual cost for an average of 34,082 feet is 50.3 cents per foot.

Q. 50.3 cents?

A. Yes, sir.

Q. So it is more than the estimated cost?

A. Yes, sir.

Q. Speaking generally now, have prices at the present time fallen so that you could expect to reproduce this property—at present prices—for less than those that you have previously paid?

A. No, sir. Just now prices are a little bit lower than they were two years ago; but if we should start to reproduce this property, the prices I have given are low.

Q. Now, are there any other comparisons to be made?

A. Not on that exhibit.

Q. Now take the next blue-print, which will be marked Complainants' Exhibit 8.

(A blue-print was so marked.)

Q. What does that exhibit show, Mr. Darling?

A. That shows the estimated and actual costs of sub- and superstructure of various bridges constructed on the Northern Pacific system between the years 1904 and 1909, inclusive, and represents a total cost of about $3,444,000.

Q. And shows substantially the same information that is shown in the exhibit last introduced?

A. Yes, sir.

Q. The items of cost being distributed in the same way?

A. Yes, sir.

Q. I do not think you need to spend time developing the details of that, because it will speak for itself. Take the next item, No. 6, Ties. You show here 3,089.93 miles of main track, 3,000 ties per mile.

A. Yes, sir.

Q. Does that fairly represent the number of ties in each mile of track?

A. Yes, sir.

Q. At the present time?

A. Yes, sir.

Q. Branches, sidings and yards, 5,061.63 miles at 2880 ties per mile, exclusive of turnouts and crossings?

A. Yes, sir.

Q. That is correct as to the branches, sidings and yards?

A. Yes, sir.

Q. Making a total of 23,847,285 ties?

A. Yes, sir.

Q. How much do you charge per tie?

A. An average of 55 cents per tie for the material delivered on board cars, including peeling and handling, plus the cost of transportation, an average of 200 miles, at 14 cents per 100 pounds—which is the tariff rate—making a total for transportation of 25 cents, or a total cost per tie delivered on board cars of 80 cents.

Q. Assuming what kind of ties now?

A. The average ties as we get them.

Q. And included in that average would be what kind of ties?

A. Oak, fir, tamarack, pine, hemlock, some birch, and a few other scattering kinds.

Q. Rails—explain briefly how you have arrived at the detail of that item?

A. The basis of cost of rails is $31 per ton. That in-

cludes $28 at the mill, plus the inspection, plus $1.75 freight from Chicago to St. Paul, plus $1 per ton for handling in transit and in the yard. In addition to that we have an item of transportation of $13 per ton, which is the tariff rate on rails hauled to the centre of gravity of the system.

Q. That you estimate to be a thousand miles?

A. Yes, sir, almost exactly a thousand miles.

Q. Frogs and switches—explain the detail of that item.

A. That is the cost of that material, plus handling in transit and store charges to the amount of $5, plus transportation (an average of a thousand miles) of $18.20—a total of $111.71, for the material in a 67-pound turnout, which is our average turnout. In order to get at the average turnout, we took all the turnouts we have from our records, added the weights together and divided by the number of turnouts and got the average weight of a turnout. To that we add the cost of transportation to the centre of gravity of the system.

Q. Taking both the frogs and switches and the rails, how did you arrive at the quantities to which you applied those prices?

A. From our records.

Q. From the records?

A. Yes, sir.

Q. Going right back to the item of grading, in order that there may be no misunderstanding about it. The quantities shown there, you state, have been ascertained from the profiles in the engineering department?

A. Yes, sir, from the profiles and from our records; mostly from our profiles, however.

Q. You do not wish it to be understood that you have in the engineering department any definite, absolute record showing the exact number of yards moved on the Northern Pacific system?

A. No, sir; only we have records showing yards moved under separate contracts, but they may or may not include a part of a line or the whole of a line. But we have very few complete records of the material in the line today—in any portion of the line today.

Q. Take the next item, No. 9, Track Fastenings.

A. Those are all taken from our records—everything on that sheet.

Q. That is, the quantities, the amount of material?

A. The quantities and the weights.

Q. And the prices?

A. No, sir. The prices are what we have to pay.

Q. What you have to pay at the present time?

A. Yes, sir, plus—

Q. Plus transportation charges?

A. Plus transportation charges and handling in transit.

Q. And in determining the transportation charges you have proceeded in the same way, that is, estimated the cost of hauling it to the center of the system?

A. Yes, sir.

Q. The next item is ballast. How did you arrive at the quantities of ballast?

A. Ballast is the hardest item we have to estimate correctly, of any of the items we have. It is almost impossible to tell how much ballast there is on a certain mile of railroad. You can go to a certain mile of railroad and you can dig, but you never can find the bottom of the ballast, and you may dig through the ballast. But we generally put on new lines about 3,000 cubic yards of ballast per mile, on the main line, and that is about what clean ballast there is on the main line; but of course in addition to that there is a lot of ballast inside of the roadbed that we cannot account for and we do not consider it.

Q. But it does actually tend to improve the roadbed?

A. Yes, sir. We have assumed as ballast what we actually put on, about 3,000 cubic yards per mile of main line. The yards are almost equally as well ballasted as the main line, and the side-tracks of the main line are usually as well ballasted as the main line. But we have taken those side-tracks and yards and branch lines and added them together, and have assumed there is about 1,500 yards to the mile.

Q. That makes a total, then, of 16,862,235 cubic yards of ballast on both main line, branches and sidings?

A. Yes, sir.

Q. How did you arrive at the price per cubic yard for ballast?

A. That price per cubic yard is merely my judgment of what that material would cost in place.

Q. Upon what do you base that judgment?

A. I base it on my experience in getting out ballast and estimating it and paying for it and seeing what it has cost complete. But we have some exhibits here showing what ballast has actually cost us.

Q. That is what I wanted to come up to.

A paper was marked Complainants' Exhibit 9 (Darling).

COMPLAINANT'S EXHIBIT 9 (DARLING).

TEMENT OF ACTUAL COST OF TRACKLAYING AND BALLASTING DONE BY NORTHERN PACIFIC RAILWAY COMPANY DURING YEARS 1906, 1907 AND 1908.

BALLASTING: COST PER CUBIC YARD:

	No. Miles.	Cubic yards.	Maintenance.	Rent of Equipment.	Train service and Transportation.	Paid Contractors.	Total.
newick - Van-							
uver	255.80	897,731	3.6c.	18.4c.	30.00c.	34.70c.	86.70c.
te Pine Hill	32.89	124,683	3.6	9.87	20.12	30.87	64.46
Regis-Paradise	24.99	78,986	3.6	12.58	20.25	37.93	74.36
h Dakota	31.02	108,675	3.6	11.25	36.75	36.00	87.60
nesota	62.62	198,257	3.6	13.25	25.50	41.25	83.60
. & I. F	37.00	140,000	3.6	8.98	15.29	33.84	61.71
	444.32	1,548,332	3.6c	15.43c	27.27c	35.39c	81.69c

TRACKLAYING: COST PER MILE:

	Number Miles.	Rent of Equipment.	Train service and Transportation.	Paid Contractors.	Total
newick - Vancouver	255.80	$283.10	$402.79	$583.66	$1,269.55
te Pine Hill	32.89	49.19	360.05	714.09	1,123.33
tegis - Paradise	24.99	107.05	431.98	658.97	1,198.00
h Dakota	31.02	120.50	245.43	392.15	758.08
nesota	62.62	120.50	245.43	392.15	758.08
. & I. F	37.00	60.77	399.63	400.06	860.46
	444.32	$203.09	$367.84	$541.95	$1,112.88

Q. Just state to the Master what Complainants' Exhibit 9 shows in reference to the cost of ballasting, what the exhibit is, what it shows?

A. It shows the details of the actual cost to the railway company of putting under the track, complete, a yard of ballast, and also the cost per mile of laying track.

Q. That is, what it has actually cost the Northern Pacific Railway Company during the years 1906, 1907, and 1908?

A. Yes, sir.

Q. It represents actual prices paid?

A. Yes, sir.

Q. And how much has that been per yard?

A. That has averaged on 444.32 miles, including a total of 1,548,332 cubic yards of ballast, 81.69 cents per cubic yard.

Q. That covers different states on the system—Montana, North Dakota, Minnesota, and Washington?

A. Yes, sir.

Q. The price fixed in your estimate is 66 cents?

A. Yes sir.

Q. Take the next item, track laying. You have multiplied the grand total of miles by 920; that is, figured that it cost $920 per mile to lay track?

A. Yes, sir.

Q. How was that figure arrived at?

A. Track laying and surfacing should be divided under two heads; first, track laid that is to be ballasted; second, track laid that is not to be ballasted but is to carry traffic for surfacing, that is, material thrown in from the sides or sand brought in from some nearby place. Track laying of that nature, including surfacing, costs about $250 a mile more than track laying that is to be ballasted later on. And I have assumed as an average price for track laying the general average between the two, which is about $920 per mile. I have taken track laying itself at $740 and track laying that is to be surfaced at $1,100, making a total of $1,840, which averages $920 per mile.

Q. And how does that average contrast with the prices actually paid during the years 1906, 1907 and 1908, as shown by Complainants' Exhibit 9?

A. Those same 444.32 miles for which we had an estimate for ballast cost, on an average, complete, $1,112.88 per mile.

Q. The next item, fencing right-of-way. How was the total of $905,090 arrived at?

A. That is taken from our records. I have no details of that, because that matter has never come up in detail, but it

is taken from our records, and multiplying so much per mile by the different kinds of fencing.

Q. That is, you have taken the number of miles of fencing as shown by the records—

A. Yes, sir.

Q. —and multiplied it by what your experience shows would be the present cost of constructing it?

A. Yes.

Q. The same is true of crossings and signs?

A. Yes, sir.

Q. Interlocking plants?

A. Yes, sir.

Q. Signal apparatus?

A. Yes, sir.

Q. Telegraph lines and telephone lines and appurtenances?

A. Telegraph lines and telephone lines and appurtenances, the estimates were furnished by the superintendent of telegraph, for which we have complete details.

Q. Station buildings and fixtures?

A. Yes, sir; those are from our records.

Q. Those were taken from the records?

A. Yes, sir.

Q. The prices per square foot as shown in the sheet numbered 18. Are they about what you would have to pay at the present time?

A. Yes, sir.

Q. You add 12 per cent. to the total to cover the cost of transportation?

A. Yes, sir.

Q. At tariff rates?

A. At tariff rates.

Q. General office buildings and fixtures, estimated cost of reproduction; how was that arrived at?

A. That includes the headquarters building at Tacoma and at St. Paul. That was taken from our actual records of the structure itself; we have got details of both of them, and we apply the prices that it would cost to construct at the present time.

Q. Shops, engine houses and turn-tables?

A. That is the same way; from our records complete.

Q. Shop machinery and tools?

A. That is furnished by the superintendent of motive power.

Q. Water stations?

A. That is from our records entirely, complete.

Q. Fuel stations?
A. The same.
Q. Dock and wharf property?
A. The same.
Q. This dock and wharf property is, of course, independent of the real property?
A. Yes, sir.
Q. It does not include any real estate?
A. No; that is the buildings on the property.
Q. Miscellaneous structures?
A. That covers stockyards, track scales, snow fences, section houses, ice houses, telegraph offices, tool houses, dwelling houses, and other miscellaneous buildings and fixtures. Those are from our records, and cost $2,882,586.70.
Q. The next item: joint work at Seattle. Explain what that includes?
A. That includes the terminal station—that is, a half interest in the terminal station at Seattle, half interest in the tunnel, and half interest in the tracks on the terminal grounds.
Q. How did you determine that one-half interest in that would cost $1,332,000 to reproduce?
A. From the records; that is, we got the quantities from the record and applied our prices.
Q. What prices?
A. The prices which it would cost to reproduce them at this time.
Q. The next item is steam locomotives.
A. Items 27, 28, 29, 30, and 31, including steam locomotives, passenger train cars, freight train cars, miscellaneous equipment and floating equipment, were furnished by the superintendent of motive power.
Q. The next item is mechanical engineering.
A. That is estimated as one per cent. on items 27 to 31, inclusive.
Q. That is, equipment items?
A. Yes, sir; and to provide for the getting up of general designs, the making of specifications, the inspection and trial of the machines complete. That is work that has to be done by the railway company, and it is not done by the manufacturer.
Q. The first item of engineering, then, did not cover any of those equipment items?
A. No, sir.
Q. The next item is the interest, and in order to explain that—
A. The next item is contingencies, is it not?

Q. The next item, I guess, ought to be contingencies, but it is omitted from my copy.

A. On the first page it specifies just what it covers.

Q. Oh, yes; the next item is contingencies. You have no special sheet for that.

A. No, sir.

Q. Just explain what "contingencies" is supposed to cover.

A. Contingencies are to provide for legal expenses, superintendence, organization, and most of it unenumerated items, floods, personal injuries and other unforeseen conditions that might arise during the progress of the work, and includes ten per cent. of items 1 to 32, inclusive.

The Master: What page is that on?

Mr. Donnelly: It is item 33 of the first page; there is no separate detail of it.

Q. That would cover anything like strikes—

A. Yes, sir; personal injuries.

Q. —or any embarrassment to which you may be subjected in carrying on the work?

A. Yes, sir.

Q. And you have included in that ten per cent. of all of the previous items?

A. Yes, sir.

Q. Now, what is your judgment as to the fairness of that percentage of the previous items to cover the item of contingencies?

A. It is absolutely necessary to cover those contingencies in an estimate made up in the way that mine has been made up.

Q. Is that a fair percentage?

A. Yes, sir.

Q. In the actual practice of constructing a line is allowance made for things of this character—

A. Yes, sir.

Q. —contingencies?

A. Yes, sir.

Q. And experience shows the necessity of making an allowance for such?

A. Yes, sir, experience shows the necessity of making allowances, and it also shows we never allow enough.

Q. Well, is that amount usually allowed?

A. Ten per cent., yes, sir.

Q. Ten per cent. of all of the items that precede that on the list?

A. Yes, sir.

Q. In preparing this estimate, Mr. Darling, how long have you assumed that it would take to reconstruct the Northern Pacific Railroad?

A. Twelve years.

Q. And how do you apportion the construction during that period of twelve years? That is, what work have you assumed would be done from year to year?

A. I have shown on the last two sheets the general method of construction and the manner of arriving at the charges.

Q. That is, you have assumed that during the first three years you would complete the purchase of the principal terminals, make progress in location of main lines and get contracts ready for construction?

A. Yes.

Mr. Teal: It would take three years to do that?

The Witness: Yes.

Q. During the following two years, to the end of the fifth year, just go ahead and state what you have assumed to be done in that item.

A. The main object in this method of construction is, first, to purchase the terminals at the principal points and get surveys and contracts in shape for construction; then to turn over every portion of the main line which we possibly can so as to accommodate traffic, and turn these lines over in a temporary condition because we cannot stop to complete one part of the main line; if we did, it would take too long, and the rest of the territory would not be served. Our idea is to start, for instance, from St. Paul and turn over in the first two years all that portion of the line from St. Paul to Fargo, St. Paul to Duluth, and Duluth to Staples, for instance, or about 577 miles. We will get that in shape so we can turn traffic on to it, but our bridges will not be complete. We will have timber bridges in, we will have a few side tracks, enough to operate that portion temporarily while we are going ahead and building the road. Our terminals will not be finished, but we will have some temporary buildings up for depots, and temporary buildings perhaps for freight houses during the construction of the balance. Then we go ahead and keep pushing our main line. At the end of the sixth year we will perhaps get the main line through from Fargo to Livingston, get the track down and get it ballasted in fairly decent shape so we can get some traffic over it. That will be a distance of 795 miles. At the end of the seventh year we would have completed all that portion from Livingston to Helena and Butte, a distance of 256 miles.

Q. Mountain construction?

A. Yes, sir, mountain construction, mountain operation. At the end of the eighth year we would have the main line in temporary condition from Butte and Helena to Spokane, a distance of 526 miles. Of course during all this time we are working beyond, doing everything we can at the west end and doing everything we can at the east in getting our side tracks and our yards and buildings all located in proper shape. At the end of the tenth year they complete some of the branches, sidings and yards—1900 miles. At the end of the eleventh year they complete some of the branches, sidings and yards. At the end of the twelfth year they complete everything. Now, that gives nine years of actual construction. We have got 81 hundred and some odd miles; that means over 900 miles a year. Now, nobody ever built 900 miles a year, that I ever heard of.

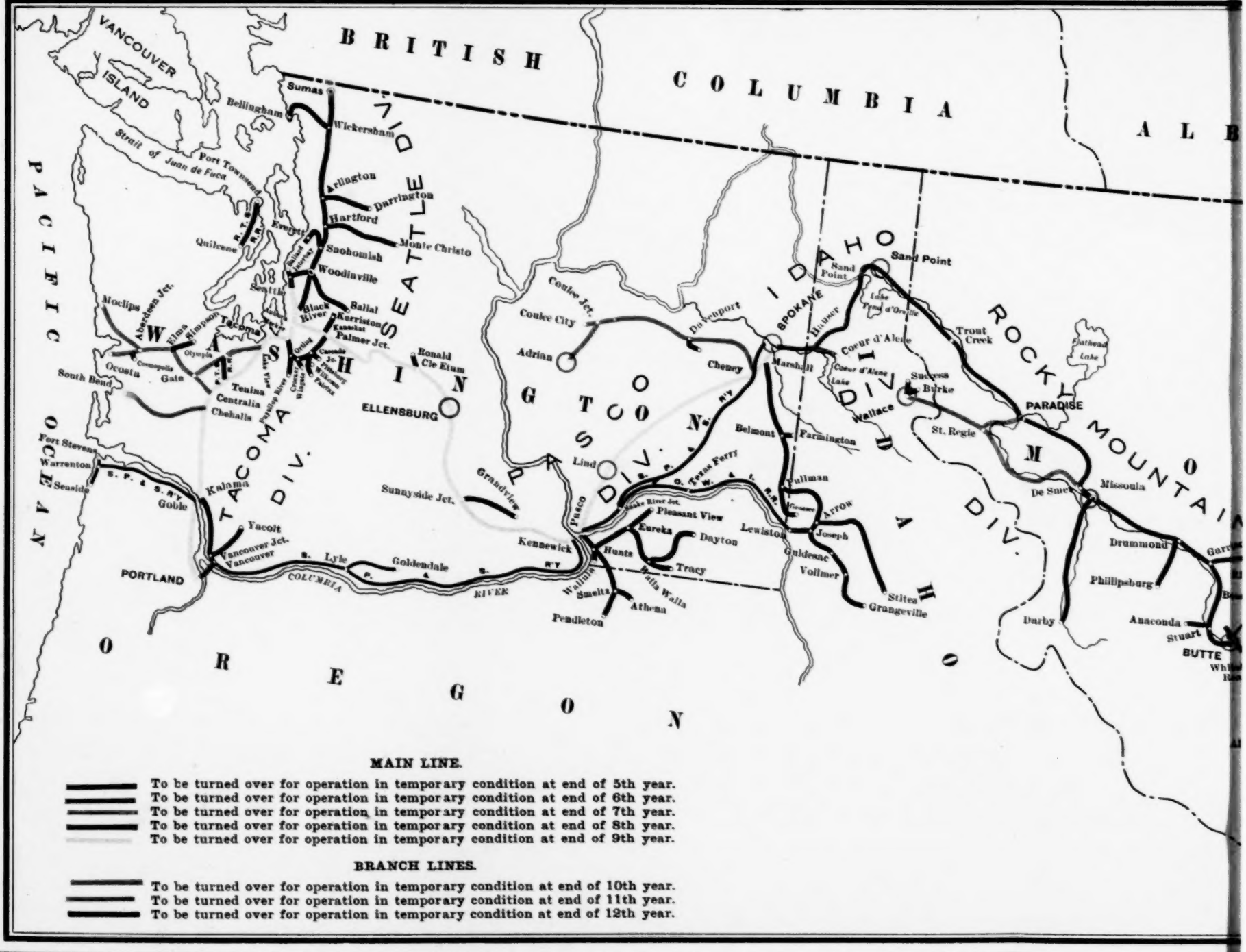
Q. How does the construction you have allowed for there compare with the construction by the Milwaukee of its Pacific coast extension?

A. The Milwaukee, at the end of 1910, about the time they will have the line completed for traffic, will have been under construction during the years 1906, 1907, 1908, 1909, and 1910—five years, and they will have laid and completed about 1500 miles of track—1350 miles of main line and the balance side tracks and yards. That is an average of something less than 300 miles per year.

Q. Have you prepared a map or blue-print showing the scheme of construction as outlined by you in this testimony, Mr. Darling?

A. Yes, sir.

A map was marked Complainants' Exhibit 10 (Darling).

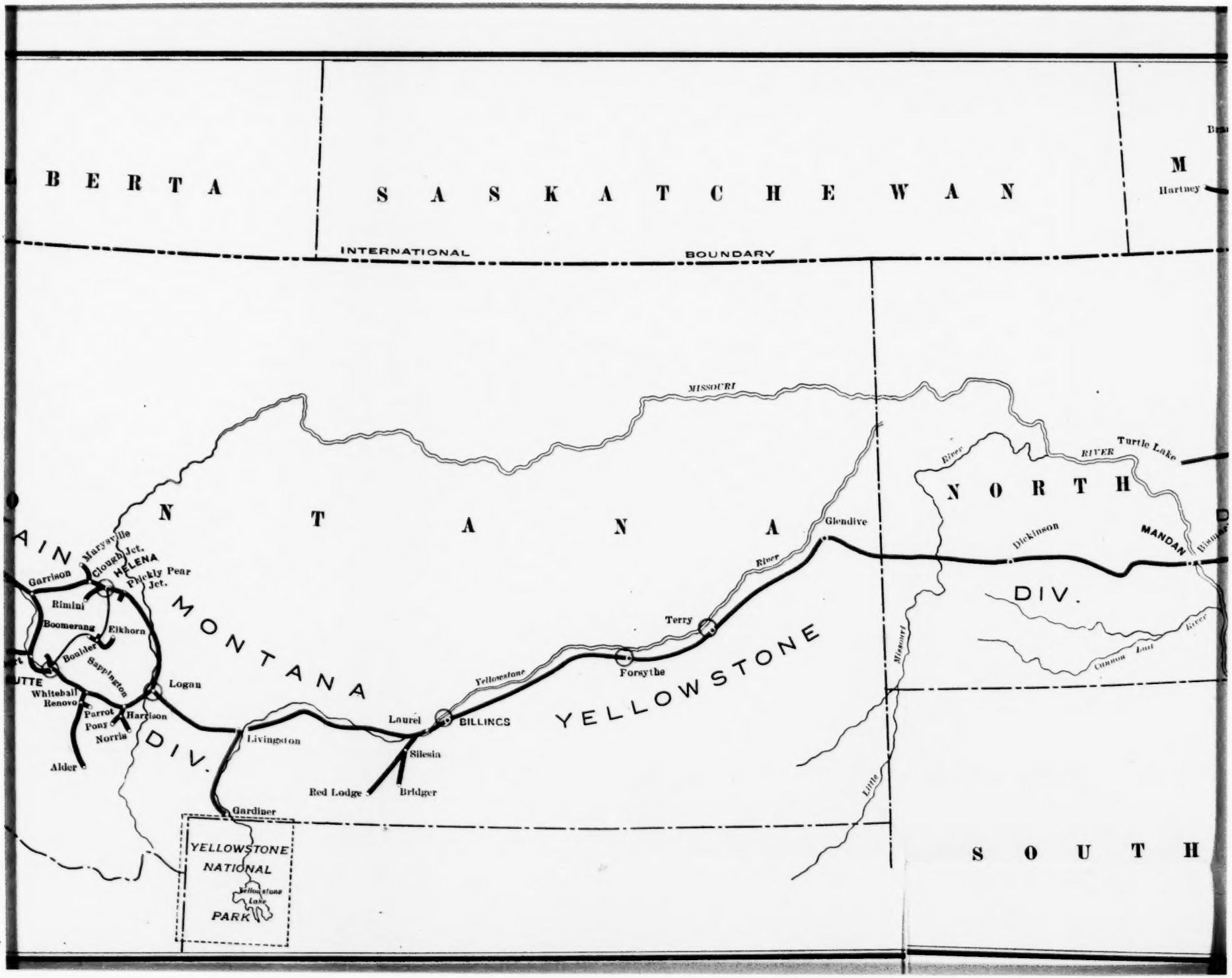


MAIN LINE.

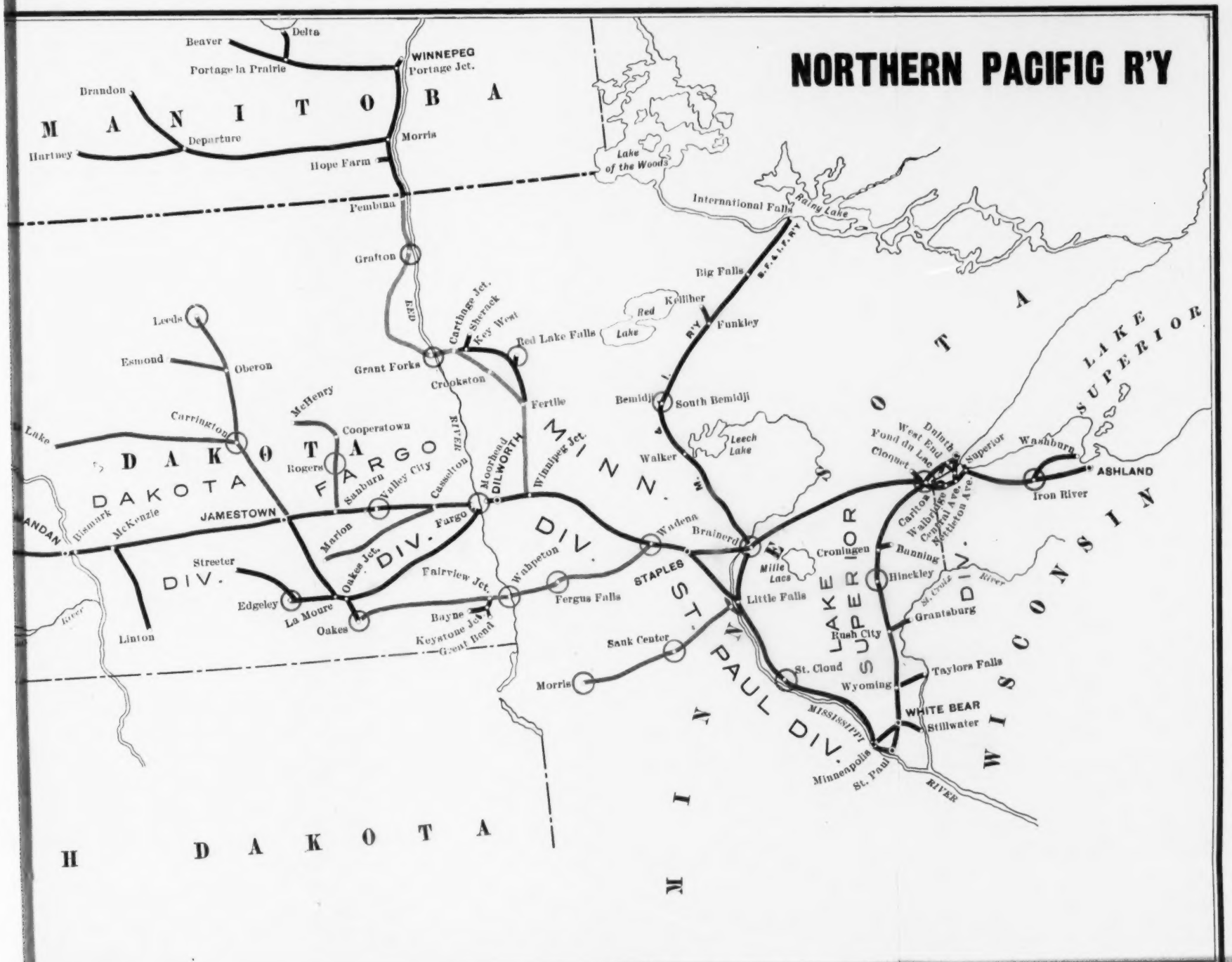
To be turned over for operation in temporary condition at end of 5th year.
To be turned over for operation in temporary condition at end of 6th year.
To be turned over for operation in temporary condition at end of 7th year.
To be turned over for operation in temporary condition at end of 8th year.
To be turned over for operation in temporary condition at end of 9th year.

BRANCH LINES.

To be turned over for operation in temporary condition at end of 10th year.
To be turned over for operation in temporary condition at end of 11th year.
To be turned over for operation in temporary condition at end of 12th year.



BERTA
SASKATCHEWAN
M
Hartney
INTERNATIONAL BOUNDARY
MISSOURI
RIVER
Turtle Lake
River
NORTH
Glendive
Dickinson
MANDAN
DIV.
Cannon Ball River
Missouri
Little
SOUTH
NTANA
MONTANA
YELLOWSTONE
DIV.
Yellowstone
River
Terry
Forsythe
BILLINGS
Laurel
Silesia
Bridger
Red Lodge
Livingston
Gardiner
YELLOWSTONE NATIONAL PARK
Yellowstone Lake
Logan
Harrison
Norris
Pony
Parrot
Renovo
Whitehall
Alder
Boulder
Sappington
Elkhorn
Boomerang
Rimini
Garrison
Marysville
Clough Jct.
HELENA
Prickly Pear Jct.


NORTHERN PACIFIC R'Y
MANITOBA
DAKOTA
DAKOTA DIV.
FARGO DIV.
MINN. DIV.
ST. PAUL DIV.
LAKE SUPERIOR DIV.
LAKE SUPERIOR
WISCONSIN
MINNESOTA
H DAKOTA
WINNEPEG
Portage Jct.
Beaver
Delta
Portage la Prairie
Brandon
Departure
Hartney
Morris
Hope Farm
Pembina
Grafton
Grant Forks
Carthage Jct.
Sherack
Key West
Crookston
Red Lake Falls
Fertile
Leeds
Esmond
Oberon
Carrington
McHenry
Cooperstown
Rogers
Sanburn
Valley City
Casselton
Moorhead
DILWORTH
Winnipeg Jct.
Fargo
Marion
Oakes Jct.
Fairview Jct.
Wahpeton
Fergus Falls
Bayne
Keystone Jct.
Great Bend
Oakes
La Moure
Edgeley
Streeter
Linton
Bismark
McKenzie
JAMESTOWN
Wadena
STAPLES
Brainerd
Little Falls
Sauk Center
Morris
St. Cloud
Minneapolis
St. Paul
MISSISSIPPI
RIVER
Wyoming
WHITE BEAR
Stillwater
Taylors Falls
Rush City
Grantsburg
Hinckley
Banning
Croningen
Mille Lacs
Carlton
Walbridge
Central Ave.
Nettleton Ave.
Cloquet
Fond du Lac
West End
Duluth
Superior
Washburn
ASHLAND
Iron River
Lake of the Woods
International Falls
Rainy Lake
Big Falls
Kelliher
Funkley
Red Lake
Bemidji
South Bemidji
Walker
Leech Lake
Lake
RED RIVER
St. Croix River

Q. Will you explain to the Master the scheme of re-construction as it is shown on that map or blue-print.

A. These lines and the various colors represent the Northern Pacific system complete, and I have shown in various colors the portions which it is proposed to turn over for operation in temporary condition at the end of the various years. At the bottom of the map is a legend; for instance, the lines in red show the portion of the system to be turned over for temporary operation at the end of the fifth year; the lines in black those to be turned over at the end of the sixth year, and so on all through.

Q. The legend at the bottom of the blue-print explains the coloring of the lines throughout, does it?

A. Yes, sir. This map is also intended to show the proposed method of construction.

Q. Just explain a little more fully what that is.

A. In order to construct the Northern Pacific system as it exists, and do it within the time we are figuring, you have got to do it by the aid of other railroads. Therefore, I have shown by yellow circles intersecting lines that we must use for getting out men, tools and material for construction. For instance, on the portion between St. Paul and Fargo we would haul out to St. Cloud or points near there over the Great Northern line; at Wadena we would haul over the Great Northern; at Brainerd we would haul in stuff over the M. & L.; at Oakes we would haul in over the Northwestern; at Carrington over the Great Northern; at Grafton over the Great Northern; at Terry we would haul stuff via the Milwaukee; at Billings we would haul material over the Burlington; at Logan over the Milwaukee; at Butte we would haul in material and men by way of the Union Pacific or the Milwaukee; at Helena we would have to use the Great Northern; at Missoula we would use the Milwaukee; at Wallace the Union Pacific; at Sand Point the "Soo" or the Spokane International or the Great Northern; at Spokane the same; at Lind, Washington, we would haul in material over the Milwaukee; at Adrian over the Great Northern; at Ellensburg over the Milwaukee; and on the Coast by various roads.

Mr. Teal: Do I understand you to say that in your estimate you figure that all of your material for this road is to be hauled over other roads?

The Witness: No, sir, not all of it.

Mr. Teal: A very considerable portion of it?

The Witness: Yes, sir, a very considerable portion of it.

Q. But whether hauled on other roads or on your own, the tariff rates have been allowed for the transportation of material?

A. Yes, sir.

Q. In fixing the period of twelve years, do you consider that to be as short a period as would be required for the economical construction of the road?

A. Yes, sir. And then I doubt very much whether we could do it at the price we have estimated.

Q. Within that time?

A. Yes, sir.

Q. The shortening of the period, you think, would tend to increase the cost of construction?

A. Certainly; very much.

Q. Now, turning to page 34, on which the interest is summarized, will you explain the way in which the interest item has been made up?

A. The interest item is based first, of course, on the rate assumed for interest, which is 6 per cent; second, it is based on the time in which that money must be in use. To get at the time that that money is in use you have got to outline the method of construction and how this money must be called for to pay the bills as they are due. That is shown in considerable detail on page 34. That is, in order to get these lines ready so we can build 900 miles a year, get our location completed and get the principal terminals purchased, which you must do before you begin work, you have got to expend for the various terminals, at Superior—shall I read these various sums?

Q. Well, at those points that are named on page 34?

A. Yes, sir; $78,163,401.03.

Q. You take those items from Mr. Cooper's estimate?

A. Yes, sir. Now, those purchases are to be made or are to be paid for in equal installments during the first three years. This gives us an average interest of a year and a half. That interest has got to be carried forward until the completion of that road, which is nine additional years, or a total of 10-1/2 years of interest on that particular item. Then, after the first three years—

Q. Well, that makes 63 per cent; 10-1/2 years, 63 per cent on the item of $78,163,401.03?

A. Yes.

Q. Or a total of 49 millions?

A. Yes, sir.

Q. Now, in arriving at that item you have assumed that throughout the entire period of twelve years which would be

consumed in the re-construction of the road, that the property would yield no income in excess of the cost of its operation?

A. Yes, sir.

Q. And that assumption has been carried through in the preparation of this statement?

A. Yes, sir.

Q. Now just go ahead.

A. After the end of the third year the balance of the terminals are to be purchased in equal installments during the years 4 to 10, inclusive, because at the end of the tenth year all the right-of-way must have been purchased in order to complete the construction. That makes an average of six per cent for 5-1/2 years, at 33 per cent for one year. Then the right-of-way and station grounds are to be purchased during the years 3 to 10, inclusive; that is, they have got to begin the purchase of the right-of-way the third year in order to begin construction immediately afterward. Those rights-of-way and station grounds are to be paid for in equal installments during the years 3 to 10, inclusive, making interest at 6 per cent for six years or a total of 36 per cent, on $29,691,682, the interest amounting to $10,689,005.04. The construction work included in items 3 to 26, inclusive, are to be spread over the years 3 to 12, and carries interest an average of five years at 6 per cent, or 30 per cent for one year. In order to handle the traffic, or as much of it as can be during construction, they have got to begin the purchase of equipment during the fifth year, I think it is,—fifth to twelfth, and that is to be purchased in equal installments during those years, giving an average interest of four years, or 24 per cent for one year. The engineering item covers equal installments during the twelve years, or 36 per cent of the engineering item. The mechanical engineering during the years 3 to 12, an average of five years. Contingencies during the twelve years, or an average of six years, at 36 per cent. Making a grand total of $164,388,-682.09.

Q. And making a grand total, then, for the 34 items, of $622,425,904.63?

A. Yes, sir.

Q. And does that in your judgment represent what it would fairly cost to reproduce the operating system of the Northern Pacific Railway Company?

A. Yes, sir, on the basis that I have used.

Q. On that basis; assuming that rate of interest on the computation to determine it?

A. Yes, sir.

Q. Now, taking the items that follow No. 34 on the first sheet. The first item is "Lines in Manitoba, $7,000,000." That $7,000,000 represents what? How was that figure arrived at?

A. That is the sum agreed on with the Manitoba government which is to be paid, for which the lines are leased, at four per cent—in other words, the income of the lines in Manitoba is $280,000 a year. That is represented by the capital of $7,000,000.

Q. They have an option on the purchase at that price?

A. Yes, sir.

Q. The next item: "Duluth Union Depot, exclusive of right-of-way."

A. That is made up from our records.

Q. And that item has not been included in any of the previous items?

A. No, sir.

Q. "The St. Paul union depot, 1/9 interest."

A. That was made up from complete records.

Q. That is, you have taken 1/9 of its total value as shown?

A. The total cost of reproduction.

Q. "Minnesota Transfer Railway, 1/10 interest." How was that item arrived at?

A. That item was taken from Mr. Stickney's estimate of the cost of reproduction of that property.

Q. Who is Mr. Stickney?

A. Mr. Samuel Stickney. He was president of the Minnesota Transfer?

Q. And how and where was that estimate made? For what purpose?

A. It was made for the purpose of submitting it to the state in the Minnesota rate case—or rather to the State at the request of the Minnesota Railway & Warehouse Commission.

Q. "The interest in the Northern Pacific Terminal Company of Oregon."

A. That was an estimate made by our engineer at Portland.

Q. The Northern Pacific owns 40 per cent of that property?

A. Yes, sir.

Q. The item "1/3 interest in the Lake Superior Terminal & Transfer Railway Company." State what that property is.

A. That is property in West Superior. Terminal Company.

Q. And how was that figure arrived at?

A. That is the cost of reproduction—based on what it cost.

Q. Based on what the property actually cost?

A. Yes, sir. I don't think there has ever been a real estimate made of the Lake Superior Terminal.

Q. The Northern Pacific owns a one-third interest in that property.

A. Yes, sir.

Q. "The Big Fork & International Falls Railway, $706,000." Is that property owned by the Northern Pacific?

A. 70 per cent of it.

Q. 70 per cent of it?

A. Did I understand you to say "Minnesota & International?"

Q. No. Big Fork & International Falls Railway.

A. That was made up from our records. That is entirely owned by the Northern Pacific.

Q. That is entirely owned by the Northern Pacific?

A. Yes, sir.

Q. The Minnesota & International Railway, the Northern Pacific owns 70 per cent of it?

A. Yes, sir.

Q. And that item $3,760,000, how was that arrived at?

A. That is an estimate made at the request of the Minnesota Railroad and Warehouse Commission.

Q. Of the cost of reproduction of the entire property?

A. Yes, sir.

Q. And you have taken 70 per cent of that cost?

A. Yes, sir.

Q. The next item there—"Supplies on hand."

A. That was furnished by our storekeeper, and that is the amount of supplies that he is carrying at this time.

Q. The next item, "Lines under construction," just explains that.

A. That covers the work which is now being done between Missoula and Garrison, from Auburn to Meeker, the extension of the Green River and Northern. And that is all.

Q. How was the total arrived at there? Does that represent—

A. That represents the estimates to date.

Q. Of money actually expended?

A. Money actually paid, yes, sir.

Q. The next item—"Northern Pacific 1/3 interest in S. P. & S. Railway."

A. Yes, sir.

Q. That is the railway under construction from Vancouver to Portland—a million and a half.

A. That represents the ownership of the Northern Pacific in that portion of the line between Vancouver and Portland.

Q. That is to say, that portion of the line in addition to the one-half general ownership that the Northern Pacific has in that property, it owns an additional third, or five-sixths, of that line?

A. Yes, sir.

Q. The last item: "Northern Pacific half interest in the S. P. & S. railway under construction, 27 millions odd."

A. That represents half of the total money paid out to date.

Q. In the construction of the S. P. & S. railway?

A. Yes, sir, and its lines.

Q. Mr. Holden suggests it would be well to indicate, for the benefit of the master, where that S. P. & S. railway is, so that he will understand.

Mr. Teal: We call it the North Bank out there.

A. (Indicating on map) That is shown in white.

Q. It is shown in white on the blue-print, is it?

A. It shows in white on the blue-print, extending from Spokane southwesterly along the line shown in white and marked "S. P. & S." on the map, to Pasco and Kennewick at the crossing of the Columbia and junction with the Snake; thence along the north bank of the Columbia to Vancouver; thence across the river to Portland, a branch extending from Gobel, near Kalamo, the crossing of the Northern Pacific over the Columbia river; thence along the south bank of the Columbia river to Astoria and Seaside; thence a line extending from Lyle to Goldendale, in Washington.

Mr. Teal: Mr. Darling, may I ask you a question there? I notice you said that the Seattle, Spokane & Portland went from Gobel to Astoria and Seaside.

The Witness: Yes, sir.

Mr. Teal: That is the Astoria & Columbia?

The Witness: Yes; owned by the Portland & Seattle.

Mr. Teal: And the purchase price of that is included in this?

The Witness: Yes, sir.

Mr. Teal: That is what I wanted to know.

The Witness: Yes, sir.

Mr. Teal: And the same way with this road out to Goldendale there?

The Witness: Yes, sir.

Mr. Teal: The purchase price of that is included in this amount?

The Witness: Yes, sir.

Q. That line is spoken of in your estimate here as being under construction?

A. Yes, sir.

Q. Isn't that, or a portion of it, in actual operation now?

A. Yes, sir; it is in operation from practically a point about seven miles west of Spokane through to Portland and Seaside.

Q. The line, then, is practically completed?

A. Except some approaches into Spokane. There is an approach to the Northern Pacific not completed, and an approach to the Great Northern.

Col. Clough: Give them the length of the Spokane, Portland & Seattle.

The Witness: The length of the Spokane, Portland & Seattle is—I haven't got the figures here, but from Portland to Pasco is 230 miles; from Pasco to Spokane it is 146 miles.

Mr. Teal: That is the new construction?

The Witness: Yes, sir. Then there is a branch which I did not refer to before, extending from Spokane Junction, on the Snake River, east to a connection with the Union Pacific at Texas Ferry, a distance of 41 miles.

Mr. Teal: That is up the north bank of the Snake?

The Witness: Yes, sir. It is a branch extending from Lyle to Goldendale. I have forgotten the distance. I haven't got it here. The road from Gobel to Astoria and Seaside, a branch over to Warren, I don't remember the length of that; I think it is 118 miles, though.

Mr. Teal: A little more.

Q. Now, these various properties, Mr. Darling—the Duluth union depot, the St. Paul union depot, the Minnesota Transfer Railway, Lake Superior Terminal & Transfer Company, the Northern Pacific Terminal Company of Oregon, the Big Fork & International Falls Railway, and the Minnesota & International Railway—are all adjuncts, in a sense, of the Northern Pacific system and used in connection with its operation?

A. Yes, sir.

Q. And the same is true of the Spokane, Portland & Seattle—it will be operated in connection with the Northern Pacific?

A. Yes, sir.

Q. The other half interest in that line being owned by the Great Northern?

A. Yes, sir.

Q. Those additional items, then, following the item No. 34 on the first sheet of your exhibit 4, bring the grand total up to $682,193,601.68?

A. Yes, sir.

Q. Now, you submitted an estimate in connection with your testimony in the Minnesota rate case, did you, Mr. Darling?

A. Yes, sir.

Q. And what was the grand total of the cost of reconstruction as shown by that estimate introduced in that case?

A. I don't remember, but I think it was $457,000,000.

Q. Wasn't it $497,000,000?

A. $497,000,000, yes.

Q. What items are included in this present estimate that were not embraced in the estimate at that time?

A. I don't know as I could tell you all of them. I would have to compare them. But I know some that weren't. The Northern Pacific one-half interest in the Spokane, Portland & Seattle was not included, amounting to $27,608,733.51; the Northern Pacific one-third interest in the Spokane, Portland & Seattle between Vancouver and Portland, $1,500,000, lines under construction amounting to $9,619,283; and in addition to that—

Q. The supplies on hand?

A. Part of that was included—what we had at that time. In addition to that there is a lot of work that we have done since. We have done a great deal of work in the last four or five years. And these estimates vary every year.

Q. How did the interest item in the present estimate compare with the interest item as it appeared in your estimate in the Minnesota rate case?

A. The interest item on the lines as estimated for the Minnesota rate case was made on an entirely different basis.

Q. And what was that basis?

A. I used in that calculation four per cent interest, and I also figured on turning all these lines over to the operating department in uncompleted condition, at which time the operating department were to take it, relieve the construction department of all interest, and the deficit to be taken care of by profit and loss and paid for in later earnings, if there were any.

Q. And the total of the interest, then, as it was shown in the exhibit in that case, amounted to how much?

A. I think it was $37,000,000 or $38,000,000.

Q. As against $164,000,000?

A. Yes, sir. And it also provides for two years more to

construct it in, for the reason that we have done practically two years of work since.

Q. This present estimate gives the estimated cost of reproduction as of the present date?

A. Yes, sir.

Q. How much would the total—that is, the first total of $622,000,000—be reduced if you were to take the cost of reproduction of the system as it stood say November 1, 1907?

A. November 1, 1907?

Q. Yes.

A. $21,385,950.10 plus six per cent interest for nine months, or 4-1/2 per cent; the total interest being $962,367.75, or a total less than the present estimate of $22,348,317.85.

Q. And how much would it be reduced if you were to take the cost of reconstruction as of June 30, 1908?

A. The work done during that time amounts to $10,052,-885.18.

Q. That is the work done since June 30, 1908?

A. Between July 1, 1908, and April 12, 1909. And in addition to that, there is interest at six per cent for an average of five months, or 2-1/2 per cent, amounting to $251,332.13—a total of $10,304,217.31.

Mr. Donnelly: Now, all of those exhibits are to be considered in evidence, subject to the objection?

Mr. Teal: Yes.

Q. In the preparation of this statement, Mr. Darling, of course the labors of a number of clerks have been utilized in the preparation of this detailed statement?

A. Yes, sir.

Q. And is everybody who has in any way been employed in connection with the preparation of the statement available here?

A. Yes, sir.

Q. For the purposes of examination?

A. Yes, sir.

Q. All of the records of the Northern Pacific Railway Company that have been utilized in its preparation?

A. Yes, sir. There may be one or two men that I couldn't get hold of.

Q. That you couldn't get hold of right away?

A. That I couldn't get hold of right away. I could find them.

Q. And get them?

A. Yes, sir.

Q. And are you willing that any of them should be called and examined, for the purpose of determining the accuracy of these statements?

A. Yes, sir.

Q. And all of the records are open to examination?

A. Yes, sir.

Q. For the purpose of determining it?

A. Yes, sir.

Mr. Teal: We will ask Mr. Darling a few questions this evening to take up some of the time and save some time, but we will have to look this exhibit over, of course.

Cross-Examination.

By Mr. Teal:

Q. Mr. Darling, there are one or two matters that I would like to have clearly and definitely understood. You have used the expression several times that this data was in existence, or taken from the books of the company that you have used, and represents actual figures and represents actual results, as shown by the books of the Northern Pacific Railway Company?

A. Yes, sir. And in each instance I refer to quantities—not cost.

Q. Then as to quantities, the engineering, or other department, of the Northern Pacific Railway Company can furnish them exact, if any one desires to investigate it?

A. With such exceptions as I have testified to.

Q. Now, what exceptions are there?

A. Grading; all grading items, ballast, crossings and signs. I don't think we could furnish every one of those complete. But, with those exceptions, I think we could make an inventory, with time.

Q. Now, as to actual cost what do your books show?

A. They don't show much of anything. I have shown here on one exhibit all the yardage in grading which we can get from our books. I might be able to pick out a few more, but I have had a lot of men at work for ten days or two weeks on these books trying to pick out grading items for which we have a cost. I wanted to find out what each yard of dirt cost, what each yard of loose rock cost, and what each yard of solid rock cost the railroad company, and the only way to do that was to go to the books for which we have contracts

and contract prices and see what we paid the contractors and see what it actually cost us. Now, I picked out all of those items I could find and I have shown them on this exhibit.

Q. Since the reorganization of this company your books must show all items that have gone into construction and what has been paid for them, must they not?

A. I couldn't tell you as to that.

Q. You cannot say, then, whether or not a construction item is charged up?

A. I don't know how it is charged. You would have to ask the comptroller for that. I couldn't tell you, sir.

Q. In the preparation of this statement, this is what might be termed a hypothetical statement, is it not? That is, in this way: You have taken the problem, as you understand it, of reconstructing the Northern Pacific railroad as it stood on April 12, 1909, based upon 12 years time in its construction? That is correct, is it not?

A. Yes, sir.

Q. And you have also based your interest charge as of the same date at the rate of six per cent. per annum, covering the entire period of time?

A. Yes, sir; during which money was in use.

Q. Yes. And you have also shown construction in divisions of several hundred miles each running through separate periods?

A. Yes, sir.

Q. And you have allowed nothing whatever for any earnings in that time?

A. Nothing whatever.

Q. Or for operating expenses?

A. Nothing whatever, no, sir.

Q. And you think, as an expert, with your experience, under oath, that that is a fair way to submit a question of that kind to the court?

A. It is a fair way—

Q. I would like to have an answer "Yes" or "No," Mr. Darling; and then you can explain after you answer.

A. Let me get the gist of the question, please.

Mr. Teal: Read the question, please.

(Question read).

A. I don't know. My estimate is not made up on that basis.

Q. Your estimate wasn't made up on the basis to submit a fair proposition to the court?

A. Well, I don't know what you mean by "fair." My estimate was made up on the basis of the cost of reproducing that property.

Q. And you think that it is a fair proposition, and one that you are willing to submit to a court, with your experience on railroads constructed as this railroad is proposed to be constructed, that you should charge six per cent. interest upon its cost for the entire twelve years, notwithstanding thousands of miles of road have been built and are being operated in the meantime in this section of country where this road runs?

A. I didn't make up an estimate to submit to a court for any fairness whatever. My estimate is made up on a proposition to construct that road in the most economical way and in the quickest time. Now, whether that road could earn any money during the time of its operation, I don't know. My judgment is that it could not.

Q. Your judgment is that it could not?

A. No, sir; my judgment is it could not if it is constructed properly and served the public properly. Of course you can build that road so as to earn lots of money. There is no question about that. You can build it piecemeal. For example, you can build a line from here to Fargo and complete it and put it in shape for operation and handle the business, and perhaps make some money out of it—I don't know. But if you are going to build that line to serve the public properly, you have got to build the line to Fargo, you have got to turn it over in a temporary condition and get what business you can, you have got to take the business that is offered, in the best way that you can, and not wait until you get it done, because there are other people further west waiting to have their business served.

Q. So you think that if lines were built out from St. Paul towards Fargo, towards Missoula, towards Butte, in the different directions in the Dakotas and Montana, that for ten years, simply because that line was intended for a through line, eventually it would not earn any money?

A. That is my judgment. I am basing my judgment on what it appears to me the Milwaukee are doing today.

Q. You are familiar with the Great Northern Railway, are you not?

A. Yes, sir.

Q. And you are familiar with its operations under Mr. Hill?

A. Well, I am reasonably familiar.

Q. I mean its operating conditions.

A. I am in the same way that any man is.

Q. When was that road completed to the coast?

A. I should judge about 1891 or 1892; I forget about when.

Q. Do you think it paid dividends on its stock before it was completed to the coast?

A. I think the best way to find that out is to ask men who understand it. I don't know.

Q. You don't know.

A. I don't know.

Q. But at any rate your theory is that railroads built out through this country wouldn't pay unless they were completed to the Pacific coast?

A. No, sir; I don't claim any such thing as that. I claim that a line can be built from here to Fargo and get the business that the Northern Pacific has got and probably pay a lot of money on it; but you cannot do all this work that you have got to do to handle the other through business at the same time.

Q. It is your idea that the through business pays better than the local business?

A. I wasn't thinking of through business or any other kind of business. I was just simply building this line through in the most economical way and to serve the public in the best manner we could, regardless of whether we are earning anything or not.

Q. Now, then, on this six per cent. interest basis, you are of course familiar with the bonded indebtedness of the Northern Pacific?

A. Yes, sir.

Q. And do you know of any bonds that they have out at six per cent?

A. No, sir. But I am assuming that this railroad is obliterated. When they start to reconstruct this railroad is obliterated. They have nothing to issue bonds on. They have got to go to work and borrow money in the open market. They haven't got any traffic.

Q. If you are assuming it is going to be built at all, you are assuming money is going to be raised to build it?

A. It has got to be raised, but you cannot raise it on bonds, unless you have got something to mortgage.

Q. So you figure that if people were able to raise the money, because the road couldn't be built unless it was raised, you figure that on a basis of six per cent?

A. Yes, sir.

Q. With the Minnesota Commission you figured it on a basis of four per cent?

A. Yes, sir. I concede now that I was low in it; and I see that I was low simply by a better study of the conditions after that estimate was made.

Q. You made an estimate of this road in 1898, as to its value, didn't you?

A. Yes, sir.

Mr. Holden: 1898?

Q. 1898.

A. 1898. Oh, no.

Q. Didn't you go over this road?

A. No, sir.

Q. When was the first valuation you made of this road?

A. I never made a valuation of the road before 1907.

Q. Before 1907?

A. No, sir.

Q. Now, in 1907 you did make a valuation, did you not?

A. Yes, sir.

Q. And you testified in the Spokane rate case?

A. Yes, sir.

Q. In round numbers, how much have you increased your valuation of the cost of reproduction between that statement and this that you testified to at that time?

A. I don't know. I think it must be 200 and some odd million dollars.

Mr. Donnelly: Of course, there was considerable property, you understand?

Mr. Teal: Yes, I was going to ask how much was the additional property.

Q. How much additional mileage have you in this report to what you had in the Spokane report?

A. I couldn't tell you, sir. I would have to look at the Spokane report.

Q. You have a copy of that?

A. Yes, sir.

Q. Will you please bring it tomorrow morning?

A. Yes, sir.

Q. Now, in that Spokane report you also had included a valuation of $50,000,000 for coal lands, hadn't you?

A. No, sir; I didn't include that at all.

Q. No; but the item of cost was in there, wasn't it?

A. I understand it was, yes.

Q. But that wasn't included in this?

A. No, sir.

Q. Now, you made another valuation for the Minnesota Railroad Commission?

A. Yes, sir.

Q. And that valuation for the Minnesota Railroad Commission was higher than the Spokane?

A. Yes, sir.

Q. And this is higher than the Minnesota?

A. Yes, sir.

Q. And that is the order in which they came?

A. That is the order in which they came.

Q. First the Spokane?

A. Yes, sir.

Q. Then the Minnesota?

A. Yes, sir.

Q. And now this one?

A. Yes, sir.

Q. Could you state what the valuation that you put on the reproduction of the Minnesota properties was in the Minnesota rate case?

A. I think it was $101,000,000 or something.

Q. Can you state what valuation the state engineer put on the same property?

A. I cannot state; but I think it was about 30 per cent. less.

Q. About how much?

A. About 30 per cent. less.

Q. In the Spokane case there was also an engineer who testified as to the value of the Northern Pacific, was there not?

A. Yes, sir.

Q. You and he disagreed quite largely there?

A. Yes, sir; very much.

Q. The fact of the matter is that engineers do disagree very largely on these questions, don't they?

A. They are very apt to. I don't think very largely, though. If you take engineers that are acquainted with the same properties, I don't think they will vary very much.

Q. Now, I would like to ask you this: I notice here in this heading "2," that "Right-of-way, station grounds and terminals on operated lines" is fixed, in round numbers, at $114,000,000.

A. Yes, sir.

Q. Those are the figures that were furnished you by Mr. Cooper?

A. Yes, sir.

Q. The right-of-way and station grounds and terminals are purchased by the land department, are they not?

A. Yes, sir.

Q. And the engineering department, outside of simply locating what they desire, have nothing to do with that?

A. Except to say when and where they shall be purchased.

Q. That is what I meant by the language. Selecting them, is what I meant.

A. Yes, sir.

Q. And the charge for the acquisition of those properties all goes into the right-of-way department and the land department of the Northern Pacific?

A. Why, the charge for the actual purchases goes in, but the work in connection with the right-of-way, the locating of the right-of-way, and all work in connection with that right-of-way except the actual purchasing, is done by the engineering department.

Q. I understand; but this all appears in the $114,000,000?

A. Yes, sir.

Q. That is what I mean.

A. The work done by the engineering department?

Q. Yes.

A. No, sir.

Mr. Holden: Wait a minute. You said the actual purchases were made by the engineering department.

Mr. Teal: No, I didn't.

Mr. Holden: I beg your pardon. He didn't mean that, but I think the language was that.

The Witness: I said, "except the actual purchases" were made by the engineering department.

Q. Where is the item covering that account?

A. Item 1.

Q. Item 1?

A. Yes, sir.

Q. Now, we jump to item 32. There is a mechanical engineering item, one per cent.

A. Yes, sir.

Q. Of $652,000. You have already explained what that is for. And your item 1 covers "Engineering, 3 per cent. of all items from 2 to 26 inclusive?"

A. Yes, sir.

Q. Then you provide another item of ten per cent. for legal expenses, personal injuries, which covers all items from 1 to 32 inclusive, which amounts to $41,000,000. Do you think that that ten per cent. is fairly applicable to the right-of-way and station grounds that have already been covered?

A. Yes, sir.

Q. You think that ten per cent. should be added to that?

A. You have got to add it.

Q. Notwithstanding that it has already been testified by Mr. Cooper that, as near as he can determine, the actual cost of reproduction of those things, allowing for everything, is $114,000,000?

A. Yes, sir.

Q. Now, notwithstanding he has testified, as I say, that that is what it would cost to reproduce today, you still want to put ten per cent. more on it?

A. The price of that property has got nothing to do with the ten per cent.

Q. Yes, but it is required under this testimony.

A. Yes, but that has got nothing to do with it.

Q. All right.

A. That ten per cent. of those different items created a fund that is used to cover these items that I have referred to in here. Now, you have got to get the ten per cent. of the right-of-way in order to get funds enough to cover the incidentals that come up, that you cannot account for.

Q. Oh, then you figure that in the construction of this road there would be, in round numbers, $42,000,000 that would have to be provided for, no matter whether it was in percentage form or otherwise?

A. Yes, sir.

Q. When you speak of contingencies and provisions of that kind, Mr. Darling, as applicable to building a road, is it not a fact that that sort of a contingency is applicable to a road that is to be built where none has been built before?

A. Well, that is one contingency that comes in providing

for unforeseen conditions. There will be more unforeseen conditions, perhaps, in a road that has never been constructed, in that you don't know anything about the contiguous country, than there would be in this.

Q. In this instance the problem that you have is, to take the Northern Pacific Railway Company with all of these various problems solved as to floods and as to freshets and as to washouts, so far as human experience could solve them; in other words, you know now on the Northern Pacific where a culvert ought to go in, where probably you didn't know before; you know now today where there are slides, which you didn't know on the start. Do you mean to say it requires the same percentage of contingency, when you are given a problem where every factor is understood and where every factor is not understood?

A. No, sir, I don't. But, in the first place, if you are making an estimate, as we always do before a line is constructed, and use a ten per cent. contingency, ninety-nine times out of a hundred it very much overruns that contingency. Now, I have got to provide a contingency here that will show a fair cost for the reconstruction of that line. In other words, I have got to provide a better contingency than if I had all the money in the country to draw from.

Q. Now, I perhaps could ask one or two other questions. Let us take up this question of freight. You never figured before, did you, Mr. Darling, in any estimate that you made for the construction or reconstruction of this railroad, freight at tariff rates on construction material?

A. No, sir.

Q. This is the first time you ever did that?

A. Yes, sir.

Q. And that has very considerably increased the former estimate, hasn't it?

A. Yes, sir.

Q. Now, in connection with that estimate, I just want to ask you something about that, too. Take, for instance, the question of rails. As estimated there, at $13 per ton, that is based on the average haul of every rail in the system—sidings, main line and everything, isn't it?

A. Yes, sir.

Q. Quite immaterial whether you hauled it out on your own road or not?

A. It makes no difference how you haul it.

Q. Makes no difference at all?

A. No, sir.

Q. And on the basis of $13 per ton, the average haul, you did not even select the lowest tariff that has been on your lines, did you?

A. No, sir, we take tariff rates.

Q. You did not, for instance, select a tariff under which rails could be shipped to China?

A. Oh, no; no.

Q. But you took the tariff rates?

A. We took the tariff rates.

Q. And in that way it has made a very, very great difference in the cost, hasn't it?

A. Yes, sir.

Q. Now, as a matter of fact, that is not the way rails are hauled when a road is being built, is it?

A. As a matter of fact it is, exactly.

Q. It is.

A. Yes, sir.

Q. Then you think that all the roads charge tariff rates, do you?

A. I guess I didn't understand your question.

Q. No.

A. Our charges were at the rate of four-tenths of a cent per ton per mile for all construction work hauled out on the main line.

Q. And some roads don't charge anything, do they?

A. I don't know as to that.

Q. Don't you know that the Harriman system doesn't make any charge?

A. I don't know it.

Q. For instance, we are constructing this line and are taking twelve years to construct it.

A. Yes, sir.

Q. So that, as you construct it, you get portions built, of course, that you can operate; then you put in sidings, double tracks and what not. Now, as you go along constructing, you can haul your own rails, can't you?

A. You can if you don't care when you get it done.

Q. Oh, well, but I mean when you put in sidings and things of that kind, there is no such great rush about that, is there, always?

A. Oh, no. The stuff that you haul in after you get your line down, you haul that in over your own railroad.

Q. That is what I say. The additional sidings and the additional work you haul in over your own railroad.

Q. And your branch lines you can haul in over your own road?

A. Oh, no, no.

Q. You can't do that?

A. A few of them you can, but the biggest part you can not; you have to haul them in in some other way, if you are going to get it done by the time I said.

Q. Then, you think the Northern Pacific, for its branch lines, is sending its rails over the Harriman system, or the Great Northern? or do you think it is hauling them itself?

A. The Northern Pacific itself?

Q. Yes.

A. These are the additions that are going in after the line is done, and of course they are going in over their own rails.

Q. I understand. But this system of the Northern Pacific that you are testifying about is in many places double-tracked.

A. The system I am talking about hasn't got a rail.

Q. Oh, yes; completed it has.

A. Oh, yes, completed it has; completed it has, yes, sir.

Q. And you complete several hundred miles each year under your own arrangement?

A. Yes, sir.

Q. You are going to use them aren't you?

A. Yes, sir.

Q. And they do use them as a matter of practice, don't they?

A. Use our own rails in hauling out stuff?

Q. Yes. Don't they haul their rails around over their own line?

A. Sometimes they do and sometimes they don't. It depends on conditions. It depends on the particular piece—

Q. How can they get the rails to the front except over their own rails?

A. On some other fellow's rails. We would get material out where we could use it to advantage.

Q. I ask you this: How would you get your own rails to the front of your own line to where you are laying track?

A. You mean where we are building a branch line or a side track?

Q. I don't care whether it is main line or what it is.

A. I want to know the conditions you are talking about. You state your conditions and I will try to answer.

Q. Suppose you are building a main line of railroad, how do you get your rails to the front?

A. Do you mean building a line of road that has got no railroad rails?

Q. Suppose it has some rails, and you are going on building, laying track; how do you get it there?

A. Get what there, and get it where?

Q. The rails.

A. Is it an extension? Is it a branch line? Is it a sidetrack, or what? I don't know what you are talking about.

Q. Say, for instance, you are laying track between Pasco and Portland—so as to make it perfectly plain.

A. You mean an extension of the present main line?

Q. We will say that, then.

A. Very well. We haul it over our own main line.

Q. And down over your extension?

A. Yes, sir.

Q. And continue to lay, don't you?

A. Yes, sir.

Q. Right ahead of the car?

A. Yes, sir.

Q. And you do that with the main line, don't you?

A. We do that in the extension of a main line; but if we were going to build a line from here to Portland, we couldn't do such a thing as that. For the first portion, from here to Fargo, we would lay some of it from the St. Paul end; we would lay some of it from the Fargo end; we would lay some of it from some intermediate point. In order to get that rail to lay we have to ship it in from somewhere else.

Q. On this estimate you have figured that full tariff charges have been paid on every rail, no matter where it came from?

A. Yes, sir, I have.

Q. And you think that is a fair way to estimate to a court who has to pass upon these things between shippers and carriers, or anybody else—a fair way to estimate what the cost of a road would be?

A. I will tell you as a matter of fact that it costs more to haul over constructed lines, over your own track that is not ballasted or is not in shape—it costs more than tariff charges amount to.

Q. Now, if that is true—for instance, taking your contracts on the North Bank road; what sort of an arrangement do you have with your contractors about delivering their equipment?

A. We deliver it free of cost—pay the freight.

Q. And what is your contract about the delivery of the men to the work?

A. We deliver the men to the contractor.

Q. Free of cost, don't you?

A. Yes, sir. Well, free of cost to him?

Q. Yes.

A. Yes, sir.

Q. And they simply travel in the same passenger trains that the other passengers travel, don't they?

A. Why, sometimes; unless there are two or three men too many, when they have to make up another section, or a special train, or put on another car.

Q. They wouldn't put on another section for two or three men, would they, Mr. Darling?

A. At the time they were building the Portland & Seattle I saw train after train go out of the Union Depot in two sections because they had too many men on.

Q. You said two or three too many.

A. Well, we have to limit the men that go, and we have to limit the cars that go. The Superintendent of transportation calls us up every morning and wants to know how many men are going, and wants to know if we cannot send them out on No. 2 or No. 3. We have to put two sections on.

Q. Now let us take up a little thing that is, I think, of some interest. You have got ties in here at 55 cents. In arriving at that 55 cents—and this is made up now as of April 12th—please state to the court what you figure a fir tie costs on the Pacific coast at this time.

A. At this time?

Q. April 12th.

A. On April 12th I think a fir tie would cost at the mills about 35 cents—38 cents at present prices.

Q. What did you figure it at in here?

A. I figured the general average 55 cents. I think fir ties we figured about 44 or 45 cents.

Q. And there are a great many million fir ties, aren't there?

A. Yes, sir, a great many of them.

Q. So you have figured that higher than the facts would justify, haven't you?

A. No, sir.

Q. As of April 12th?

A. My prices are not made exactly as of April 12th.

Q. That is what you have testified to here.

A. No, sir, I don't think so.

Q. Then these prices are not as of April 12th?

A. No, sir, not as of April 12th. I testified that my prices are fair prices to pay for work done in twelve years, and they are a fair average of what work has cost say the last five or six or eight years.

Q. I see. Now, then, the transportation of these ties at 14 cents per 100 pounds, that is the regular lumber rate, is it not, the regular tariff rate—14 cents per 100 pounds?

A. No; that is the tariff rate for 200 miles haul, I think.

Q. That is what I say.

A. Yes, sir.

Q. Is that the rate put in by the Commission in this case, or the advanced rates?

A. That is the rate which we get from the traffic department for a haul of 200 miles.

Q. Then you are probably following the Interstate Commerce Commission rate. As a matter of fact you haul your own ties, don't you?

A. Yes, sir.

Q. And you don't pay any such rate?

A. Well, we haul our own ties when we can. But if we are building a railroad we may have to get them in over some other line.

Q. So that you have assumed in every instance that every tie that would go to this reproduced railway would have to pay tariff rates to somebody?

A. Yes, sir.

Q. And you think that is a fair way to estimate the cost of a road?

A. Yes, sir, I do.

Q. And you think, if you were estimating the cost of building a road for somebody, that you would prepare and submit to him an estimate based upon paying tariff rates upon his ties to some other road, for every mile of road that he built?

A. If I was making an estimate for some capitalist who was going to build a new railroad, I would have to do it.

Q. You would do it that way?

A. Yes, sir; couldn't do it in any other way.

Q. And you say that as an engineer?

A. Yes, sir.

Q. And that is the way your experience has shown you—

A. That is the only way you can do it. Now, I am talking about a capitalist going to build a new railroad.

Q. Yes, I know. We are talking about the same thing.

A. Yes, sir.

Q. And running all through these track fastenings, and the rails and the frogs and all the material that go into the construction of this road, you figure tariff rates on everything as though it was paid to somebody else?

A. Exactly.

Q. And that has very much increased the cost of this road over any of your previous estimates, hasn't it?

A. Yes, sir.

Q. And is one of the principal reasons for the increase, isn't it; it makes a very large amount?

A. Yes, it makes a very considerable increase—tariff rates.

Q. For instance, take your price on rails: On what is that based?

A. Based on St. Paul delivery at the rates $28 a ton at Chicago, plus $1.75, I think it is, freight to St. Paul, plus our inspection at the mills, plus one handling in transit and at the material yard. That makes $31.

Q. Is that the present price?

A. The present price at the mills is $28.

Q. I say is that the present price that you are using now?

A. Yes, sir; it has been for a good many years.

Q. You think that that would be a fairly representative price at the mills for a series of years—five or six years?

A. Yes, sir; unless rails went up. That has been the price for several years. It hasn't varied.

Q. That is what I mean. That is what I was asking you.

A. Yes, sir.

Q. Do your books, so far as you know—I don't know that you know of it all—show the actual cost of the construction of the Northern Pacific Railway Company?

A. As far as I know, they don't. I have hunted for it time and time again and I can't find it.

Q. In these different items there is no particular item for labor cost, or at the rate per day. You have figured it so much a cubic yard for rock work, and dirt, and things of that kind?

A. Yes, sir.

Q. Allowing it to appear in that way. On this question of equipment I would like to ask a question or two. Have you got your freight figured in on your interlocking plants, too?

A. Sure. I hope so. I intended to.

Q. You don't think you have overlooked that?

A. No, sir, I don't think so.

Q. And your signal apparatus, too?
A. Yes, sir.
Q. Well, I didn't want anything overlooked. Now, in these different buildings that you spoke of, figuring out the cost, I think you spoke of the St. Paul depot as one, didn't you?
A. Yes, sir.
Q. And Tacoma?
A. St. Paul station in Tacoma?
Q. And Tacoma.
A. Oh, St. Paul and Tacoma general office buildings?
Q. Yes.
A. That is the headquarters building.
Q. How did you arrive at that cost?
A. Why, we took the plans which we have on file in St. Paul and made our estimate from those plans.
Q. Of course you don't wish to be understood to say, Mr. Darling, that they don't know what that building cost in Tacoma, do you?
A. I don't. Possibly they do. But I think we know in St. Paul what the Tacoma office building and what the general office building cost. I think we have those records complete.
Q. How did your estimate of cost as it appears in here figure out with the actual cost?
A. I think they are almost identical.
Q. Almost identical?
A. Yes, sir; I think so.
Q. How long has that building been built?
A. The St. Paul?
Q. No, Tacoma.
A. I couldn't tell you. I don't know when Tacoma was built, but I presume it must have been somewhere from 15 to 20 years. I don't remember when it was built.
Q. You didn't allow anything for depreciation?
A. No, sir, not a cent.
Q. You just figured like you would build a new building?
A. Exactly.
Q. And in that instance you were not figuring the cost of reproduction of that building as it stands?
A. I was figuring the cost of the reproduction of the system. If I go to work and figure depreciation on buildings, I have got to figure appreciation on road bed, and that is an almost impossible thing to do; but it would go immensely higher than any depreciation on buildings or anything else.

Q. Then you think you are entitled to appreciation on the road-bed?

A. I haven't provided for any in my estimate, no, sir.

Q. So then, with these station buildings and fixtures, the question of their age or how long they have been in use had nothing to do with it; you just figured out the present cost of reproduction?

A. I figured out the present cost to reproduce, as near as I could, this property.

Q. Now, speaking of those station buildings and office buildings.

A. The station buildings and office buildings were figured at what it would cost to reproduce them now.

Q. That is what I wanted to know. At present prices of materials?

A. No, sir, not at present prices of materials.

Q. At what prices?

A. At such prices as we would have to pay during the next twelve years, or such prices as we would have paid during the past seven or eight years.

Q. Which is it?

A. Either way.

Q. No, excuse me. At the prices you are going to pay for the next twelve years, or the prices you did pay for the last twelve?

A. I assume the prices we would have to pay for the next twelve years would be about the same prices we paid during the past seven or eight years.

Q. Then you are figuring the prices for the next twelve years on this?

A. Yes, sir; and I am figuring the prices for the last seven or eight years, both.

Q. Now, we will take up the next thing here. Take your shop machinery and tools. What does that item represent?

A. It represents the cost of reproducing those tools—new.

Q. New?

A. New, yes, sir.

Q. This dock and wharf property, where is that situated—$5,000,000 item?

A. Duluth, Superior, Tacoma, Seattle, Portland, Kalama.

Q. What wharf property is figured in at Portland?

A. I guess I am a little wrong about Portland. I don't know as we have got a wharf at Portland.

Q. Somebody is building a big one. I was just wondering who it was.

A. That is Portland and Seattle.

Q. Because we are very anxious to have it built. Now, the wharves at Tacoma have been built quite a long while, haven't they?

A. Yes, sir.

Q. And there is considerable difficulty with teredos all over the Sound and down to Portland, isn't there?

A. Yes, sir.

Q. In those dock and wharf properties you figured the replacement of those new, just the same as you did the others?

A. Yes, sir.

Q. Now, taking up these locomotives and the passenger train cars: was there any allowance made for depreciation in the rolling stock?

A. I can't tell you, sir, but I think not. I presume not. That was made by the superintendent of motive power as the cost of reproduction, but I cannot tell you whether he allowed depreciation or not.

Q. Well, that can be ascertained?

A. I presume he can testify as to that, yes, sir.

Mr. Teal: Well, I would like to have whoever got up this part of the statement.

Mr. Donnelly: The superintendent of motive power, do you know his name and whether he is in town?

The Witness: William Moore. I think he is.

Mr. Teal: And he is the one that would get up the passenger train cars also?

The Witness: Yes, sir.

Q. I believe I asked you if you would bring your Spokane estimate tomorrow morning?

A. Yes, sir.

Q. And would you object to bringing your estimate for the State Railroad Commission, also?

A. No, sir; no objection that I know of.

Q. Do you know whether the mileage that you have estimated here agrees with the mileage reported to the Interstate Commerce Commission, or with the annual report of the stockholders of the Northern Pacific Railway?

A. It agrees with the annual report of the stockholders, with the additions made since.

Mr. Teal: I would like to have the opportunity to confer a little bit further over these. I have got certain matters established now that I wanted.

The Master: Perhaps, then, we had better take an adjournment at this time.

Mr. Teal: Yes, if the court is willing.

Mr. Wimbish: May I ask this witness a question before adjournment?

The Master: Very well.

By Mr. Wimbish:

Q. Mr. Darling, isn't railroad construction frequently let out to contractors?

A. Yes, sir.

Q. On a cost or percentage basis?

A. Certain portions of it, yes, sir.

Q. Do you know the usual charges of contractors, what percentage they usually get over the cost of construction?

A. I know what some get, yes, sir.

Q. As a rule, I mean—I mean the average price.

A. The average price, of course, depends entirely on the job, how heavy a piece of work it is, what territory it covers, and under what conditions he takes it. Everything varies so, it is hard work to make any specific statement.

Q. The percentage of contracts varies very much, you think?

A. Yes, sir.

Q. Well, what are those limits?

A. I should think the limits would be from about 3 to 10 per cent.

An adjournment was here taken until the morning of Thursday, April 15, 1909, at 10 o'clock.)

Room 326, Federal Building, St. Paul, Minn.,
April 15, 1909, 10 A. M.

The hearing was resumed before the Special Master, Hon. Frederick N. Dickson, at the above time and place.

Present:

On behalf of the Complainants, Mr. Hale Holden, Mr. Charles Donnelly, Mr. F. C. Dillard.

On behalf of the Defendant, Mr. Luther M. Walter, Mr. W. A. Wimbish, Mr. J. N. Teal.

WILLIAM L. DARLING, recalled, and his cross-examination resumed:

By Mr. Teal:

Q. Mr. Darling, in this statement of yours of April 12, I wish you would state how many miles of main track you figure there is on the Northern Pacific Railroad.

A. 6,035.72 miles.

Mr. Donnelly: That is, main track?

The Witness: Of main track.

Q. Now, according to this estimate, what do you figure the cost per mile of reproduction of the main track?

A. Including all terminals?

Q. Omitting terminals.

A. Omitting what terminals?

Q. Omitting all terminals. Let us put it this way: suppose that you were asked, as an engineer, what the cost of construction of the main line of a railroad would be, what would it mean to you?

A. It would mean the construction of the railroad and terminals.

Q. Very well. Then, if that is what it means that is what I mean.

Mr. Donnelly: By "main line" you mean main line and branches?

Mr. Teal: I mean main line.

The Witness: Yes, sir; that means the main line of the main railroad and the main line of all branches.

Mr. Donnelly: Yes.

A. If you will excuse me just a minute I will figure it for you. Approximately, $103,000 per mile.

Q. Did you bring the statement that I asked you for that you introduced in the Spokane case?

A. Yes, sir.

Q. Have you it there?

A. Yes, sir. I will have to ask to have it returned. It is the only one I have—until such time as I can duplicate it.

Q. Yes. I shall probably have some copies made. How many miles of main track, on the same basis that I have just asked in the previous question, did you figure in this statement in the Spokane case?

A. 5874.91 miles.

Q. Please state what you found the cost per mile, on the same basis, under that statement.

A. I never made a statement on the same basis, sir.

Q. Please state what the cost per mile of road was as shown by that statement.

A. This statement? Can I tell you what this statement means?

Q. After you answer the question.

A. All right, sir.

Mr. Teal: I prefer to have these questions answered. They are on cross-examination. He can explain them afterwards.

Mr. Donnelly: But he ought to be permitted to state the difference between that statement and this one.

Mr. Teal: He will have ample time to do that. All I want is to get these figures first.

The Witness: Approximately $52,000 a mile.

Q. Approximately $52,000 a mile?

A. Yes, sir.

Q. Included in that, and not included in this statement, was $50,000,000 for coal lands, was there not?

A. No, sir.

Q. You are sure of that?

Mr. Dillard: Mr. Teal, excuse me a moment. The witness stated after answering your question that he wanted to explain fully.

Mr. Teal: He will have plenty of opportunity. I simply want to ask this question.

Q. You say there was not $50,000,000 for coal lands in there?

A. No, sir.

Q. Now, if you desire to make any explanation you may make it.

A. This estimate is exactly what it purports to be on the

face of it. The cost of reproducing the improvements on the Northern Pacific estate is not the cost of the Northern Pacific railway system by any means. It is a statement of figures made up mostly under the direction of the counsel. For instance, that statement carries a column of "Depreciation." I protested against any column of "Depreciation" and testified to it in Chicago. It also carries freight on the basis of 4/10 per cent. a ton a mile. I protested against the use of any of those figures. And, in addition to that, that is not an estimate, nor does not purport to be an estimate, of Northern Pacific Railway property.

Q. What does it purport to be?

A. It purports to be an estimate (made under partial direction) of improvements on the Northern Pacific system, on the Northern Pacific real estate.

Q. Let us understand what you mean, Mr. Darling. You say that that does not purport or was not introduced in evidence to show the cost of reproduction of the Northern Pacific system?

A. No. sir; never was.

Q. Just state what it was, and what it was introduced for, and what you testified to about it.

A. When that statement was made up it was my understanding that the cost of the system was to be estimated, and testimony brought before the Interstate Commerce Commission in Chicago to show the cost of reproducing that property. I told them there was no such thing; that property well-maintained cannot depreciate.

Mr. Dillard: Mr. Darling, as to that single item of depreciation, doesn't the seasoning of the road far overbalance it?

The Witness: Yes, sir, far overreaches it.

Q. When you say that this covers just the cost, you mean the cost of what, of the Northern Pacific?

A. Of the improvements.

Q. Now, what do you mean by that?

A. I mean exactly what this says here.

Mr. Donnelly: Right at the outset, Mr. Teal, I may state that there is $114,000,000 for real property figured in the statement which you are examining him about, introduced yesterday, and was not included—

Mr. Teal: We will get that presently.

The Witness: I can show you practically where the differences are.

Mr. Teal: Well, we will have this introduced, and this will speak for itself, won't it?

Mr. Donnelly: Of course, the records in the Spokane case are available.

Mr. Teal: Yes; but we will have this copied in this case. I would like to have this introduced in evidence and marked, I presume Defendant's Exhibit 1.

The Witness: I would like to get that back and make duplicates of it.

Mr. Donnelly: We will supply you copies of that.

Mr. Teal: I am not going to take this original.

The Master: You are offering this as part of the cross-examination?

Mr. Teal: Yes, as part of the cross-examination. So that the reporter will understand what it is, it is headed: "Cost of Improvements on Estate of the Northern Pacific Railway, including 2860.67 miles of single and second track of main line, 3014.24 miles main and second track branch lines, and 1819.88 miles of spurs, sidings and yard tracks—total 7694.79 miles."

The Master: Have it marked.

Mr. Teal: This is going to be copied. When the copy comes it may be marked. You can just mark it on the top "Darling cross-examination No. 1."

(Said paper was marked Defendant's Exhibit 1 (Darling.)

DEFENDANT'S EXHIBIT 1.

Cost of Improvements on estate of the Northern Pacific Railway, including 2860.67 miles of single and second track of Main Line, 3044.24 miles main and second track Branch Lines, and 1819.88 miles of spurs, sidings and yard tracks—total 7694.79 miles:

	Cost of Producing.	Depreciation.	Present Value
Grading:			
Labor and material for laying track complete	$138,743,971	$1,065,963	$137,678,008
Grade revisions:			
1897–1901	2,350,600		2,350,600
Turnouts	1,838,750	20%	1,471,000
Permanent Bridges	9,960,248		9,950,248
Temporary Bridges	4,284,580	856,920	3,427,660
Culverts	3,091,000	72,000	3,019,000
Wooden Bridges filled	4,518,600		4,518,600
Tunnels	3,921,421		3,921,421
Fencing	707,290	20%	565,832
Snow Fence	537,600	20%	430,080
Telegraph	1,443,000	10%	1,298,700
Water Supply	1,971,200	20%	1,576,960
Coaling Stations	635,900	20%	454,240
Wharves and Docks, including dredging of channels	1,725,000	10 %	1,552,500
Stock Yards	152,857	20%	122,250
Track Scales	107,671	10%	96,904
Cattle Guards	57,195	20%	50,756
Roundhouses, Turntables, Power Houses, etc	1,680,448	10%	1,512,403
Shop Buildings	2,091,650	10%	1,882,485
Miscellaneous Buildings	1,578,528	20%	1,262,822
Warehouses	2,886,016	15%	2,453,113
Headquarters Buildings	756,600	10%	680,940
Furniture	440,000	20	352,000
Passenger Stations	1,102,304	20%	881,843
Combination Stations	1,408,960	20%	1,127,168
Duluth Union Depot	343,300	20%	274,600
St. Paul Union Depot	159,200		159,200
Interlocking	123,555	10%	111,200
Block System	44,307		44,307
Mile Posts and Signs	129,584	20%	103,667
Ash Pits	79,067	10%	71,160
Oil and Sand Houses	120,960	10%	108,864
Shop Tools and Machinery	1,100,000	20%	880,000
Kalama Ferry & Steamer	617,400	20%	493,900
Lines in Manitoba	7,000,000		7,000,000
Joint work, Seattle	2,457,000		2,457,000
	$200,155,762		$194,336,431

Engineering 3%	$6,004,673		
	$206,160,435		
Contingencies 10%	20,616,043		
	$226,776,478		
Interest 10% (2½ yrs. @ 4%)	22,677,648		
	$249,454,126	$5,819,331	$243,634,795
Freight Equipment	30,486,000	15.09%	25,885,400
Passenger Equipment	5,898,000	14.22%	5,053,300
Power	16,480,200	16.72%	13,724,000
Floating Equipment	497,000	20%	397,600
	$ 53,361,200		$ 45,060,300
Grand Total	$302,815,326		$283,695,095

DETAILS OF GRADING.

MAIN TRACK.			
Main Line	2,749.57 miles		
Double Track	110.85 miles		
Duluth Union Depot	.25 miles		
	2,860.67 miles	@ $9,941.00	$28,437,920.00
BRANCHES	2,679.75		
Double Track	1.53		
Spurs	309.12		
Yards and Sidings	1,455.38		
Wash & Col. River	168.86		
Spurs & Sidings	21.65		
Pt. Townsend Southern	43.63		
Spurs & Sidings	3.46		
M. & I. 70%	150.74		
	4,834.12 miles	@ 7,745.00	37,440,260.00
Clearing	22,036 acres	@ 80.00	1,762,880.00
Grubbing	30,851 stations.	@ 16.50	590,041.50
Earth	116,110,913 yards	@ .28	32,511,055.00
Hard Pan	38,703,637 yards	@ .42	16,255,528.00
Loose Rock	12,721,303 yards	@ .50	6,360,651.50
Solid Rock	9,051,266 yards	@ 1.10	9,956,392.60
Riprap	2,714,621 yards	@ 2.00	5,429,242.00
			$138,743,971.00

Average per mile 22,925 cubic yards excavation.

Earth	66%
Hard Pan, etc	22%
Loose Rock	7%
Solid Rock	5%

Appreciation 10% on $70,512,869	$7,051,287	
Depreciation 10% on steel, 25c. each on ties (See detail sheet)	8,117,250	$1,065,963.00
		$137,678,008.00

1898			Present (1907)	
Main Track & Branches	4,418.82		Main Track	2,860.67
Sidings	849.55		Branches & Sidings	4,834.12
	5,268.37	1.4605%		7,694.79

Quantities.		
Clearing	15,089 acres.	22,036 acres.
Grubbing	21,124 acres.	30,851 acres.
Earth	88,334,218 yards.	154,814,550 yards.
Loose Rock	7,258,532 yards.	12,721,303 yards.
Solid Rock	5,164,479 yards.	9,051,266 yards.
Riprap	1,548,911 yards.	2,714,621 yards.

1.20% x 1.4605% = 1.7526%.

Cost of One Mile of Main Track.

AVERAGE HAUL FOR STEEL AND TRIMMINGS 1,000 MILES @ .4c. PER TON PER MILE.

AVERAGE HAUL FOR TIES 400 MILES @ .4c. PER TON PER MILE.

AVERAGE WEIGHT OF ANGLE BARS 7.3 TON PER MILE, BOLTS .75 TONS, SPIKES 3.4 TONS.

Steel, F. O. B. St. Paul, including two handlings in transit	117 ton	@	31.00 per ton	3,627.00
Angle Bars	7.3 ton	@	34.20 per ton	249.66
Bolts	0.75 ton	@	55.00 per ton	41.25
Spikes	3.4 ton	@	42.20 per ton	143.48
Tie Plates	7.5 ton	@	44.00 per ton	330.00
Cost of Material, Yard and work therein	135.95 ton	@	1.00 per ton	135.95
Contract cost of laying track			357.50	357.50
Cost of one extra switch per mile		@	27.50	27.50
Rent of equipment, train service and hauling to the front		@	375.00	375.00
Ties, 3,000		@	.55	1,650.00
Ballast, 3,000 cubic yards		@	.66	1,980.00
Transportation of ties, rail, etc.				1,023.80
				$9,941.14

Ballast—contract price	$0.27	
Cost of shovels, etc	.03	
Transportation—60 miles @ 8.004.	.36	
Total		$0.66

Bolts, 1,500 per mile @ 1 lb. equals.....0.75 ton per mile.
Spikes, 34 kegs @ 200 lb., equals.....3.4 ton per mile.
Angle Bars, average weight 14,600 lbs., equals..7.3 ton per mile.
DEPRECIATION:

Ties, 3,000 @ 25c	750.00	
Steel, 3,627 @ 10%	362.70	$1,112.70

Depreciation is $1,112.70 x 2,860.67—$3,183,067.00.

COST OF ONE MILE OF BRANCH LINES.

Average weight of steel in branch lines, spurs and sidings, 97 ton	@	$31.00 per ton	$3,007.00
Angle bars, 6.46 ton	@	34.20	220.93
Bolts and Nuts, 0.75 ton	@	55.00	41.25
Spikes, 3.4 ton	@	42.00	143.48
Material Yard work, 107.61 ton	@	1.00	107.61
Cost of laying track	@	357.50	357.50
Cost of one extra switch	@	27.50	27.50
Ties, 2,880	@	.55	1,584.00
Rental of equipment, hauling to the front, train service, etc			375.00
Ballast, average 1,500 cu. yds.	@	.66	990.00
Transportation of steel, ties and trimmings			891.24
			$7,745.51

Depreciation:

Ties, 2,880 @ 25c	$720.00	
Steel, 3,007 @ 10%	300.70	$1,020.70

Depreciation is $1,020.70 x 4,834.12 miles equals $4,934,136.00.

COST PER CUBIC YARD FOR GRADING.

EARTH:		
Average haul, 400 ft	$0.22	
Overhaul	.03	
Transportation	.03	$0.28
HARD PAN AND CEMENT GRAVEL:		
Contract price	$0.35	
Overhaul	.04	
Transportation	.03	$0.42
LOOSE ROCK:		
Contract price	$0.42	
Overhaul	.04	
Transportation	.04	$0.50
SOLID:		
Contract price	$1.00	
Overhaul	.05	
Transportation	.05	$1.10

CLEARING:		
Contract price per acre	$75.00	
Transportation	5.00	$80.00
GRUBBING:		
Contract price per station	$15.00	
Transportation	1.50	$16.50
RIPRAP:		
Contract price, per yd	$1.75	
Extra haul and work	.15	
Transportation	.10	$2.00

COST OF TUNNELS.

Single track tunnels lined with concrete.

Lineal Feet.

100–700	700–1200′	4000′	10000′
3390′	1069′	7548′	9833′

Double track tunnel lined with concrete ..... 1,656 lineal ft.
Single track tunnel lined with wood ..... 4,919 lineal ft.

Cost of Tunnels.

Concrete, 24 inch thick equals 4.1 cu. yd. per ft. of tunnel.

Concrete	$9.00	Contract price
1¼ bbl. cement	2.50	
Freight	1.00	
	$12.50	

Concrete, $12.50 x 4.1 equals $51.25 per lineal foot of tunnel.

TUNNELS.

100′ to 800′—wood—is $50.00 plus 10% (See note) equals	$55.00	
Wood	24.75	$80.00
100′ to 800′—concrete:		
$50 plus 10%	$55.00	
Concrete	51.25	
Falsework	13.00	$119.25
800′ to 1,200′—		
$55 plus 10%	$60.50	
Concrete	51.25	
Falsework	13.00	$124.75
4,000′		
$75 plus 10%	$82.50	
Concrete	51.25	
Falsework	13.00	$146.75

4,000′ to 10,000′—		
$90 plus 10%	$99.00	
Concrete	51.25	
Falsework	13.00	$163.25

DOUBLE TRACK, SHORT TUNNELS.

Concrete, 5.2 cu. yds. @ $12.50	$65.00	
Extra excavation, 11.5 cu. yd. @ $3.00	34.50	
Contract price, $50 plus 10%	55.00	
Falsework	13.00	$167.50

NOTE.—10% is added to contract price for extra excavation.

AVERAGE COST OF TURNOUTS.

Ties	$54.00	
Switch stand	13.30	
Connecting rod	1.65	
Frog	33.00	
Rail braces	1.60	
Split switch	31.00	
Switch lamp	5.00	
Guard rails	8.80	
Freight charges	14.40	$162.75

BRIDGING, N. P. SYSTEM.

Howe truss spans exclusive of traffic charges	$ 608,380.00	
Traffic charges, 21,550 tons @ $4.00	86,200.00	$ 694,580.00
Steel and combination bridges, exclusive of freight charges	$8,894,848.00	
Freight charges	1,055,400.00	9,950,248.00
Steel, Combination and Howe Truss Bridges		$ 10,644,828.00
Cost of Bridge Filling		3,012,415.00
Pile and Trestle Bridges 359,000 lin. ft. @ $10.00		3,590,000.00
Total cost of Bridging		$17,247,243.00

	Estimated Cost	Freight Charges	Total Cost including Freight Charges
Fencing, 4,575 miles @ $150	$ 686,250	0.4c	$ 707,290
Water supply (including tanks, standpipes, wells, pipe-lines, etc.)	1,760,000	12%	1,971,200
Wharves and docks (1,750,000 sq. ft. @ 70c.)	1,725,000	.....	1,725,000
Coaling Stations	567,800	12%	635,936
Stock Yards (3,412,000 sq. ft. @ 4c.)	136,480	12%	152,857
Track Scales, 74 ($1,300)	96,135	12%	107,671
Cattle Guards, 3,464 @ $15.00	51,960	12%	57,195
Roundhouses, turntables, power houses, etc.:			
Frame, $1,300 per stall Brick, $2,100 per stall Turntables, $5,000 apiece	1,500,400	12%	1,680,448
Shop Buildings:			
Brick, one story $1.50 Brick, two story $2.50 Frame, $1.00 per sq. ft.	1,901,500	10%	2,091,650
Warehouses:			
Frame, $1.20 per sq. ft. Brick, $1.60 per sq. ft.	2,576,800	12%	2,886,016
Headquarters Buildings	756,600	.....	756,600
Passenger Stations:			
Ordinary brick, $2.50 sq. ft. Frame, $1.50 per sq. ft. Special, actual cost.	984,200	12%	1,102,304
Combination Stations:			
One story, $1.50 sq. ft. Two story, $2.50 sq. ft.	1,258,600	12%	1,408,960
Interlocking	123,195	4/10c	123,555
Mile posts and signs (5,785 miles @ $20.00)	115,700	12%	129,584
Ash pits	70,596	12%	79,657
Oil and sand houses ($1.50 per sq. ft.)	108,000	12%	120,960
Block System	39,560	12%	44,307
Misc. Buildings and Piping	1,409,400	12%	1,578,528
Snow Fence (320 miles @ $1,500)	480,000	12%	537,600

	Total Cost including Freight Charges	Depreciation	Present Value
Fencing, 4575 miles @ $150	$ 707,290	20%	$ 565,832
Water supply (including tanks, standpipes, wells, pipe-lines, etc.)	1,971,200	20%	1,576,960
Wharves and Docks (1,750,000 sq. ft. @ 70c.)	1,725,000	10%	1,552,500
Coaling Stations	635,936	20%	508,749
Stockyards (3,412,000 sq. ft. @ 4c.)	152,857	20%	122,250
Track Scales, 74 ($1,300)	107,671	10%	96,904
Cattle Guards, 3,464 @ $15	57,195	20%	45,756
Round houses, turntables, power houses, etc.:			
Frame, $1,300 per stall. Brick, $2,100 per stall. Turntables, $5,000 apiece	1,680,448	10%	1,512,403
Shop Buildings:			
Brick, one story $1.50. Brick, two story $2.50. Frame, $1.00 per sq. ft.	2,091,650	10%	1,882,485
Warehouses:			
Frame $1.20 per sq. ft. Brick $1.60 per sq. ft.	2,886,016	15%	2,453,113
Headquarters Buildings	756,600	10%	680,940
Passenger Stations:			
Ordinary brick, $2.50 sq. ft. Frame, $1.50 per sq. ft. Special, actual cost.	1,102,304	20%	881,843
Combination Stations:			
One story, $1.50 sq. ft. Two story, $2.50 sq. ft.	1,408,960	20%	1,127,168
Interlocking	123,555	10%	111,200
Mile posts and signs (5,785 miles @ $20.00)	129,584	20%	103,667
Ash pits	79,067	10%	71,160
Oil and sand houses ($1.50 per sq. ft.)	120,960	10%	108,864
Block System	44,307		44,307
Misc. Buildings and Piping	1,578,528	20%	1,262,822
Snow Fence (320 miles @ $1,500)	537,600	20%	430,080

Q. Now, Mr. Darling, you state that in making up that statement you prepared it—(the statement I refer to is the exhibit just introduced)—in accordance with instructions received from counsel?

A. As far as the items of depreciation and traffic charges are concerned. Nothing else.

Q. Nothing else.

A. No.

Q. Other than those two items, did that statement represent your honest judgment at that time as the cost of reproducing the different items?

A. Made on the basis which I have testified.

Q. Well, tell me again what basis. I don't understand what you mean. I suppose you are called as an expert engineer—

A. Yes, sir.

Q.—and are telling this court what you think, and not what the attorneys think about this.

A. Yes, sir. But you have to make an estimate on some basis. You have to make some assumption. That is the first thing you do in making an estimate—you make certain assumptions, and those assumptions are the basis of the estimate.

Q. What assumptions in there (I refer now to the Spokane exhibit) are not yours?

A. These estimates for improvements were made on the basis of the prices which it would cost to reproduce those items in ten years, I think it was, and at the prices about then prevailing. It also provided that certain lines, as soon as they could be finished, were to be turned over to operation; that the operating department was to carry the interest charges during construction and charge it to profit and loss. Now, that was to be paid out of future earnings, if there were any; of course, if there were not, it would have to be charged against construction, for which nothing was provided in my estimate.

Q. Were those assumptions your own, or were those what you were told to make?

A. Those assumptions were my own, sir.

Q. And when you were sworn in that case and testified in that case as an expert engineer, you believed that your assumption was sound and right, didn't you?

A. Well, it was certainly sound and right, if there were

any earnings afterwards to pay for those interest charges, and which I had a right to assume there would be in the course of time; but those earnings would later on have to be credited back to construction.

Q. That is true; but I say that was your honest judgment at that time?

A. Yes, sir, it was.

Q. Whatever is shown in any of those figures, excepting the part that was suggested by counsel as differing from you, was your honest conviction as an engineer at that time?

A. Yes, sir, it was.

Q. And that testimony was given about March, 1907?

A. Something like that, yes, sir.

Q. Will you examine that exhibit and see what interest charge you allowed there at that time—for what length of time?

A. The interest charges on the amount of money involved in my estimate were $22,627,648.

Q. And the interest charges now involved are $164,000,000?

A. Yes, sir.

Q. A year and a half later, on about 250 miles more of road?

A. That is correct. I would like to withdraw that answer and say that it is not on 250 miles more of road, but it is on the whole road.

Q. On the whole road?

A. Yes, sir; including 250 miles more.

Q. Have you figured up the freight charges that you now estimate in this present estimate?

A. No, sir.

Q. How many million dollars they amount to?

A. No, sir, I have not. They are included in the different items, as is called for in the Interstate Commerce Commission distribution.

Q. Would you say whether or not the freight that you have provided for as a part of the charge of construction of the Northern Pacific is over $26,000,000?

A. No, I would not—

Q. You wouldn't think it was that much, would you?

A. I wouldn't testify to that, because I don't know.

Q. But it will show in there, will it not?

A. It will show. It can be picked out of our details, yes, sir.

Q. And can you give the court some idea of the freight charge that you figured in the Spokane case, in dollars and cents?

A. No, sir, I don't think so. It was figured on the basis of 4/10 of a cent a ton a mile, though.

Q. Now, the depreciation charges in the Spokane case amounted to several million dollars less than they do in this case, did they not?

A. Depreciation?

Q. I mean the amount provided for contingencies and engineering charges.

A. Yes, sir.

Q. And when you testified in the Sokane case you were testifying as an expert engineer to tell the truth and nothing but the truth?

A. Yes, sir.

Q. And to the best of your ability you did so?

A. Yes, sir.

Q. And since that time you have had about a year and a half more experience as an engineer?

A. Yes, sir.

Mr. Donnelly: Well, it is two years, if you are going to be accurate about it.

Q. Well, two years' more experience, then, as an engineer?

A. Yes, sir. But I would like to say that in those two years I have probably done about twice as much work as I ever did before in all my life put together. I would also like to say that the estimates I made at the beginning of this work, which we have just completed, have been very far over-run, notwithstanding the fact that I allowed ten per cent. for contingencies.

Q. On your examination in that case you gave your experience as an engineer?

A. Yes, sir.

Q. And stated also that you felt you were qualified to pass upon those things, didn't you?

A. Yes, sir.

Q. And did you feel so?

A. Yes, sir.

Q. And you feel so now?

A. Yes, sir.

Q. Now, on this statement, what I would like to know—

I am asking you now as an engineer—is this statement made up in accordance with your ideas?

A. It is, exactly.

Q. And this is the way you think?

A. Yes, sir.

Q. As an engineer?

A. It is correct.

Q. —you would build a road if you had money to build it with?

A. Well, if I was to reproduce the Northern Pacific system, I would do it in this way. If the road was to be built for commercial purposes it might not be built in that way.

Q. If you were going to build a road for commercial purposes you would not build it in that way, would you?

A. No, sir; I would spread that over a big series of years.

Q. And you would build it so it would earn something as it went along, wouldn't you?

A. I probably would. I would try to, anyway, if I could.

Q. And how long do you think, in your judgment as an engineer, that in the states of Minnesota and Dakota and Wisconsin, with your terminals all ready and your rights-of-way ready, in the country as developed today, you would last as chief engineer, if you would build roads that would not earn anything for ten years?

A. Well—

Q. I would like to know, now.

A. Well, the best way to do is to judge by roads that have been built.

Q. Yes. I was going to ask you about that. You, of course, know about the operating conditions of roads in Minnesota and Wisconsin and the Dakotas, do you not?

A. Yes, sir, a few.

Q. In recent years?

A. A few, yes, sir.

Q. You know, of course, they file their sworn reports here with the Minnesota Commission?

A. Yes, sir.

Q. The fact is you have been on the stand, have you not, in some of these cases involving changes in freight rates?

A. In connection with valuation of property, yes.

Q. Will you please state whether or not the earnings of, we will say, the Northern Pacific (being the road you are familiar with) in Minnesota and Wisconsin and Dakota, for

the last two or three or four or five years, have been in excess of operating expenses and fixed charges?

A. My impression is that they are not.

Q. They are not?

A. That is, for business derived from the state.

Q. That is your impression?

A. Yes, sir.

Q. And therefore, that they have been operating at a loss?

A. That is, from business derived from the state, yes, sir.

Q. Now, this is getting interesting. I did not know you knew about this traffic condition. Now, we will take the through business. It is the through business that pays the Northern Pacific?

A. Well, it is the total business that pays the Northern Pacific. I am not an expert enough in traffic matters to testify to that.

Q. Yes, but you have testified. I want to know what you know about it.

A. You have asked me what my impression was.

Q. You have stated that it was your impression that on the business in Minnesota and the Dakotas and Wisconsin the Northern Pacific was not making any money?

A. Yes, sir.

Q. Not paying operating expenses and fixed charges?

A. That is my impression.

Q. That is your impression?

A. Yes, sir.

Q. Is it a fact that the Northern Pacific is making any money?

A. I think they are.

Q. They are paying dividends, are they not?

A. Yes, sir.

Q. And have been for a number of years?

A. Yes, sir.

Q. They have been carrying lots of surplus, too, haven't they?

A. Yes, sir; I understand so from their books.

Q. And have been considered a pretty good road?

A. Yes, sir.

Q. Now, where is your idea that this money comes from out of which these dividends are paid?

A. It is in total, the earnings in total; the through earnings and local earnings.

Q. But if the local earnings do not pay expenses, then it must be made up from some source?

A. I have never analyzed those earnings. I couldn't tell you.

Q. It must be mathematical, musn't it?

A. Oh, they must come from somewhere.

Q. Yes; but if your local earnings in the Dakotas, Wisconsin, and Minnesota do not pay the cost of operation, and your total returns are far in excess, so that you can pay dividends, as a mathematical proposition it comes from some other source, doesn't it?

A. It must.

Mr. Holden: Now, if your Honor please, I want to make an objection here. It is not fair to this witness, in the first place, to get into a traffic argument and into a mathematical argument about matters that appear on the face of the annual reports. This witness is called as an engineer. He was asked by counsel to prepare a table of figures representing his judgment as to what it would cost to reproduce the Northern Pacific system. Now, that is as far as he has been put upon the stand as a witness to go. He is not responsible for anything else in connection with this litigation. Mr. Teal has proceeded to fall into a debate with him here as to whether two and two make four, and whether certain traffic matters are or are not as he seems to think they are. It is getting merely down to a basis of argument between the witness and counsel on matters that the witness is not called upon. It is not proper cross-examination. It ought to be limited to the issues that this witness has been brought here to meet. As I say again, he is simply brought here as a civil engineer, a railroad engineer, to give his judgment as to what it would cost to reproduce this property, and that is one of the elements—a mere evidential matter—in the final proposition of determining the fair value of the property. That is one way of getting a strong light on that question—to find out what it would cost to duplicate it. That is the purpose of this testimony. If we want to know what anything is worth, we naturally first of all look to see what it would cost to get it again, to get another one like it. That is not the final test of value, but it is a strong element in the consideration of the question. Now, we want to make that point

clear. Mr. Darling has not been called here even as a witness to testify as to the value of the Northern Pacific system. He has merely been asked by counsel who are conducting the theories and expect to present the law on the subject, to prepare a table of figures, based upon his experience and knowledge as an engineer, as to what it would cost to reproduce this system, physically, as it stands today. That will help us and help both sides, and help your Honor in finding out the ultimate fact as to what is the value of the property that is devoted to the public service. Now, I say there is the limit to which his cross-examination should go. It should bear upon that and not degenerate into an argument with him upon matters that are disconnected wholly with his connection with this company, and particularly his connection with this case. We never will get through.

Mr. Teal: Well, counsel will try not to degenerate, if counsel on the other side will try to keep in their place and in their position. This statement, prepared by this engineer as a part of his direct examination, shows on its face a condition which represents twelve years of railroads in this country without any earning capacity even sufficient to pay interest. In order to prepare that statement, unless it was prepared purely arbitrarily, and for the purpose of this case, Mr. Darling must have given some thought to this subject.

Mr. Holden: Mr. Teal, may I interrupt you?

Mr. Teal: Pardon me.

Mr. Holden: Well, go ahead.

Mr. Teal: And my cross-examination is directed to ascertaining by what process he arrived at a result which would create a charge of $164,000,000, when, on substantially the same road, two years ago, he created a charge of $22,000,000 as part of the cost of construction.

The Master: I understand this claim, or statement, here is that that is what it would cost to build this road if he had to do it in the quickest possible manner, without regard to any business policy in building it; that is, if he was called upon to duplicate this system in the quickest possible manner that it could be done, without regard to whether or not money was earned while it was being built, that he could duplicate it in 12 years for this amount.

Mr. Teal: Well, I don't understand that that even is the theory. If this statement is not introduced for the purpose

of showing the reproduction cost, from Mr. Darling's standpoint, of the Northern Pacific Railroad Company—certainly as railroads are built and as railroads are operated and constructed in this country—of what use is it if it is not for that? And if he uses as a basis an entire lack of earning power for 12 years, on present day conditions throughout such a country as this, then I want to know that absolutely and want to know what his reasons are for using any such basis.

Mr. Holden: Let me just make a statement. There is where I think we are not thinking clearly on this subject and are not dealing fairly with the record. As I say again, Mr. Darling has been put on to show what in his judgment it would cost to reproduce the property. Now, as a part of that problem you have got to have some money and you have got to have it over a period of years. You have got to assign some period as a basis for your problem. We know that the Northern Pacific road actually took over 40 years to build. That wouldn't do in a problem of this kind; so we take the shortest time consistent with any element of economy. It is not the absolute condition, but it is a helpful basis for the court in determining this ultimate question of value. Now, then, a certain amount of interest has got to be paid. Mr. Darling has not testified here that there will be no earnings for any part of this road, and it is not fair to so represent him. On the contrary he yesterday said, "If you want my impression"—and that is all he said—"there will be no earnings"—meaning by that net earnings. Every pound of commercial freight that moves over a partially constructed road earns something. So I say the witness has not taken such an extreme attitude, Mr. Teal, as you seek to put him in. He is dealing with the amount of interest charges that in his judgment will have to be made during those ten years. Now, then, the problem for you, and perhaps for the rest of us in the further consideration in this case, is what, if any, would the net earnings be which might go as an offset to that. Now, I say Mr. Darling has not been called on that subject and he has not testified as to whether the net earnings which come from the small amount of commercial business that might exist would amount to a credit or not upon that interest. He has an impression, as he said yesterday, that there would not be any substantial net earnings. Now, we have got an ample amount of proof on that

subject, which we will tender to you later on; but I say that is not the proof which the chief engineer is called upon to meet, and that is not the basis of his testimony in this case, and it is not fair to say that he has testified that there will be no earnings of any kind for ten years during the construction of this road, because he has not so testified.

Mr. Teal: Let us make it twelve, because it is twelve.

Mr. Holden: Or twelve years. There is a difference between earnings and net earnings, and we should keep that in mind.

The Master: What was the question?

(Last question and answer read.)

Mr. Teal: That seems to have been answered.

Q. You are familiar with the cost of the Portland, Seattle & Spokane, are you not?

A. Yes, sir.

Q. I believe you testified in the Spokane case that that particular road would cost from $75,000 to $76,000 per mile?

A. Yes, sir.

Q. Is that correct?

A. Do you mean is that statement correct, or is that the actual cost?

Q. Is that statement correct?

A. I made the statement, yes, sir.

Q. Is that correct?

A. No, sir, I hardly think it was, because the cost was considerably more than that.

Q. About how much more?

A. Well, it has cost $100,000 a mile and over.

Q. You also testified in that case that that was a very expensive road, through rock work, and one of the best constructed roads on the Northern Pacific system, did you not?

A. One of the best constructed main lines.

Q. Yes. You also testified in that case, did you not, that the Portland & Seattle Railroad would cost probably two and a half times as much as the average of the main line?

A. Yes, sir.

Q. Is that true?

A. Yes, sir. When I made that statement I was talking about main line, not facilities.

Q. Yes, I understand. And that is true today, isn't it?

A. Yes, sir. Well, did I say two and a half times?

Q. That is what you said.

A. The average?

Q. I will read: "Leaving out all questions of terminals."

"Mr. Darling: The Portland & Seattle will cost probably two and a half times as much as the average of the main line."

Mr. Holden: What was the question to which that answer was given? Will you read that?

Mr. Teal: Yes, sir. I will have to read a little bit. He is examining upon this Portland & Seattle. (Reading.)

"Mr. Darling: That high average I had reference to was on the Portland & Seattle.

Mr. Stevens: That is an exceptional road in its construction, is it not, for a western road, at least?

Mr. Darling: It is a very heavy road.

Mr. Stevens: A very heavy grade. That is, I mean a very heavy amount of stuff to get the grades you were after.

Mr. Darling: It is a very heavy construction.

Mr. Stevens: Your purpose there is to make a very low grade, is it not?

Mr. Darling: Yes, sir.

Mr. Stevens: And therefore the original cost is very much greater than either the Northern Pacific or the Great Northern in their now condition?

Mr. Darling: Yes, sir.

Mr. Stevens: In what proportion would you say it would be greater?

Mr. Darling: Leaving out all questions of terminals?

Mr. Stevens: Yes, sir.

Mr. Darling: The Portland & Seattle will cost probably two and a half times as much as the average of the main line."

A. Well, now, that may be so. I would not be surprised if it did. When I made that statement I was talking about main line proper, not side track facilities and buildings. I would not like to make that as a definite statement now, but it is my impression it would cost close to that.

Q. Right at that time you were engaged in the construction, were you not?

A. Yes, sir.

Q. And they were passing under your observation?

A. Yes, sir.

Mr. Donnelly: Since that time you have practically completed the construction?

The Witness: Very closely, yes, sir. And since that time we have done a great deal of work on the main line of the

Northern Pacific, which has materially added to the cost of the Northern Pacific.

Q. In connection with this interest charge that you have allowed, is the only way a road could be built by the issuance of bonds and paying interest?

A. I don't think you could build a road by issuing bonds and paying interest.

Q. What other way would you get your money?

A. You would have to borrow it in some way, by notes, or stock. You might sell stock to build a road. You have to get your road built before you can bond it.

Q. When this road was completed, as figured out by you here, that would be, then, the actual cost of the reproduction of the entire system, would it not?

A. You mean this estimate of mine here?

Q. Yes.

A. Of April 12?

Q. Your last estimate.

A. Would be the total estimated cost of reproducing the Northern Pacific system?

Q. Yes. Is that right?

A. Yes, sir.

Q. But as I understand, not as a commercial proposition.

A. No, sir, not as a commercial proposition.

Q. What do you mean by the distincion between a commercial proposition and this statement?

A. This estimate is made on the basis of competing, or of reproducing the Northern Pacific system in twelve years, so as to get it through in the least possible time and serve the non-competitive points in the quickest possible time.

Q. And that is irrespective of any commercial conditions?

A. Yes, sir.

Q. You testified yesterday, as I remember, something about the Chicago, Milwaukee & Puget Sound road. Wasn't it three years ago today they commenced building that road?

A. They commenced real work in October, 1905.

Q. In October, 1905?

A. Yes, sir.

Q. From what point?

A. Well, from Seattle.

Q. I mean to what point—so we get the mileage.

A. To the Missouri river.

Q. The mileage?
A. 1350 miles, about.
Q. Are you familiar with its construction?
A. Portions of it.
Q. Do you know what it cost?
A. No, sir, I don't know what it cost.
Q. You don't know what it cost?
A. No, sir, because it is not completed yet.
Q. Well, I mean the through line.
A. You mean just the portion of the work that has been done.
Q. I say it is connected now.
A. Yes; the main line is done, but they have got no facilities; they have not got the track ballasted and in shape to operate.
Q. Your idea is they carry no freight over it.
A. They must be carrying freight over it. I think probably they are.
Q. But you don't pretend to know anything about their operating conditions, do you?
A. No, sir.
Q. Or what they are earning?
A. No, sir.
Q. Or what it cost?
A. No, sir.
Q. But it does run through substantially the same class of country that the Northern Pacific does from the Missouri River?
A. Yes, sir. That is, the same class of country, but not the same amount of settlement. It does not run through the same towns, and it does not reach the same industries. In fact, it has no industries on its line. It will take years to get them.
Q. When I was speaking of the country, I wasn't speaking of the cities. I say it runs geographically and physically through the same country?
A. Yes.
Q. It parallels your lines for hundreds of miles, in cases, doesn't it?
A. Yes, sir.
Q. Then you might just as well say so. Possibly its cost might throw some light upon what it would cost to reproduce a railroad, wouldn't it?

A. I think possibly it would. The unit prices they have paid would throw considerable light on the cost of reproduction.

Q. That is what I want to know. Now, then, upon the basis that you figure this estimate here, the questions of interest and the freight charges and the depreciation are extremely large items, are they not?

A. In this estimate?

Q. Yes.

A. Yes, sir.

Q. So that if the next estimate you made you raised to eight per cent., as you raised this one from four to six, it would increase the cost very much more, wouldn't it, on this same basis?

A. It certainly would, yes, sir.

Mr. Holden: Obviously.

Mr. Teal: That is obvious, yes.

Q. You testified in the Spokane case in 1898 that there was a very complete estimate made in connection with the properties of the Northern Pacific, didn't you?

A. I don't think I ever testified in 1898.

Q. I didn't say you testified in 1898. I said you testified in the Spokane case that in 1898 this estimate was made, was it?

A. There was a detailed estimate made of the grading.

Q. Of the grading?

A. Yes, sir.

Q. Now, in the Spokane case you started your estimate of cost of the Northern Pacific with that estimate of 1898?

A. I did, yes, sir.

Q. And you assumed that that was correct?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. And are we to understand from 1898 on that you have exact statements in the office covering these construction items?

A. No, sir, I don't think so. You mean exact cost on the books?

Q. Well, exact statements of what you have done.

A. I think I could tell the mileage that has been built and whatever lines we built; we have a record of them there in the office showing the quantities. I couldn't say as to cost.

Q. In making up this statement did you use the 1898 basis?

A. No, sir.

Q. What basis did you use this time?

A. I used the records in the office for everything except grading and ballasting, and that I used from the profiles.

Q. Why did you not use the 1898 estimate in this case?

A. Because I wanted to make an estimate of my own, complete.

Q. So that you testified in the Spokane case, did you not, that the estimate of 1898 was very complete?

A. Yes sir, at the time.

Q. And that it took a long time to make it?

A. Yes, sir.

Q. And of course it was much nearer the time that it was made, by 12 years, than an estimate made today for work done prior to 1898?

A. It was probably a nearer estimate of the amount of grading done for the condition that the road was in at that time than any estimate I could make now on the condition of the road at that time.

Q. But you did not take that estimate in this at all?

A. No, sir.

Q. Now, I would like to have you furnish the Court in this case the estimate of 1898 of the material or yardage it purported to show, and the basis you commenced with in this case, covering the same miles in each instance. You can furnish that, can you not?

A. Well, I think I can tell you right now.

Q. All right; let us have it.

A. Or very closely. My estimate in this case amounts to about 400,000 or 500,000 yards more than what I testified to in the Spokane rate case, except for work done since, which has been added to that estimate.

Q. Then you commence with 400,000 or 500,000 yards more?

A. Yes, sir; my estimate is that much higher; out of a total of 176 millions.

Q. You have a charge in here for clearing the road. I want to get at a few of these charges—in clearing the right-of-way.

Mr. Donnelly: Just a moment. You say out of a total of 176 millions.

The Witness: I think that was the estimate in the Spokane rate case; something like that. Very close.

Mr. Donnelly: Well, but the total cubic yards as shown in the present estimate.

The Witness: He asked for the basis on which this estimate was made.

Mr. Donnelly: The point I want to bring out is, Your present estimate is about 400,000 or 500,000 yards more out of a present total of 200,000,000 cubic yards?

The Witness: Yes, sir.

Q. Mr. Darling, taking your estimates on track laying and surfacing, items of that kind. Do you use the same basis now that you did in the Spokane case two years ago?

A. No, sir; I have increased the estimate somewhat.

Q. You have increased those estimates?

A. Somewhat.

Q. And on the matter of clearing, what did you do about that?

A. I think that is exactly the same.

Q. Exactly the same?

A. Yes, sir.

Q. Is it the same?

A. It is the same, yes, sir.

Q. How much do you figure that?

A. Clearing?

Q. Yes.

A. 23,032 acres, at $80 per acre; a total of $1,842,560.

Q. That is intended to cover the entire line, is it?

A. Yes, sir.

Q. Through the Dakotas?

A. Yes, sir.

Q. Montana?

A. Everywhere.

Q. And you think that that is a fair estimate?

A. Yes, sir.

Q. And you think it cost that much?

A. Yes, sir.

Q. How about the earthwork in the Spokane estimate and this estimate?

A. Earth in the Spokane rate estimate was figured at 28 cents per cubic yard.

Q. What is it figured in this estimate?

A. In this estimate it is 33 cents per cubic yard.

Q. Five cents a cubic yard more?

A. It is five cents in the statement, but it don't mean the same kind of earth.

Q. It doesn't mean the same kind of earth?

A. No, sir.

Q. What kind of earth does it mean in the Spokane case?

A. I have subdivided, in the Spokane case, everything outside of loose rock and solid rock into two classifications—one called hardpan, and the other earth. Now, hardpan is any class of material that cannot be reasonably plowed say with four horses. That would cover all earth, or all clay, cement, gravel, hardpan and material of that nature. Earth in this estimate would cover anything that can be easily plowed with four horses. Now, when this Spokane rate estimate was made I had no time to go away back into the books and get the information that I have gotten since. So, after going through all our books and getting 60,000,000 yards of quantity, as shown on that exhibit, I found that I could make a very much closer estimate by making one single classification of earth, instead of earth and hardpan, because our contracts were originally let in that way until within the last two or three years.

Q. So in this estimate you do what?

A. In this estimate I have one classification of earth covering everything outside of the loose rock and solid rock, which, of course, carries a higher price.

Q. And in the Spokane estimate you had hardpan separate?

A. Yes, sir.

Q. Would the Spokane estimate average up higher or lower than this present estimate?

A. I couldn't tell you without adding it up. It is not very far apart, I don't think.

Q. Doesn't it show right there?

A. Yes, sir.

Q. Well, let us see what it does show.

A. It shows approximately 116,000,000 yards of earth, at 28 cents, $32,500,000; hardpan, 38,703,637 cubic yards, at 42 cents, $16,255,528. Do you want the general average?

Q. Well, it might take a little longer. We probably can figure up the general average ourselves afterwards with that which appears there. Now, a very considerable part of your work on the Northern Pacific railroad has been let by contract, and that is the usual way of construction, is it not?

A. Yes, sir.

Q. And that is the way that the roads are built and paid for?

A. Generally, yes, sir.

Q. You have built, and are building today, a number of roads on the Northern Pacific railroad, haven't you?

A. Yes, sir.

Q. And you could furnish the exact statement of the cost of those roads, could you not?

A. I presume that could be furnished showing the cost to date.

Q. Yes. Well, you built a number of roads, by the president's report, during the last year or two?

A. Yes, sir. I presume they could all be furnished.

Q. Another thing I want to ask you: When a piece of road is laid out, or is intended to be built, by the management are you called upon for an estimate of the probable cost?

A. Yes, sir.

Q. And you do furnish estimates?

A. Yes, sir.

Q. And you have those estimates in your records?

A. Yes, sir.

Q. Can you recall any particular road that you have given estimates on say for the last two years?

A. Yes, sir.

Q. Will you please name a few in this section?

A. In Minnesota?

Q. Yes. Any place on the road. I don't care.

A. What is known as the Valley City change of line, a distance of approximately ten miles; the Lake Park to Glyndon change, about 24 miles; a new double-track line from Boseman to Muir tunnel, a distance of about 12 miles; complete change of line between Garrison and Missoula, for double-track line; a new line between St. Regis and Paradise, Montana; a new line between Belknap and Tosca, Montana. That is all I recall just now.

Q. On the day before yesterday, there was one line spoken of—I thought it ran south in the Dakotas some place—where securing the right of way was testified to by Mr. Cooper, where they ran through some farm.

The Master: It was in Montana, didn't he say?

Mr. Donnelly: He was speaking of the Bandman property. That was the Missoula and Garrison line change.

Mr. Teal: That was a condemnation proceeding. He spoke of another one down in Dakota, where they had to move the man's building.

The Witness: I think probably that Lake Park to Glyndon change of line. That is in Minnesota.

Mr. Teal: No, I thought it was a line about 60 or 60 miles long.

Mr. Donnelly: Have there been any changes at all, or any new lines constructed, in North Dakota, Mr. Darling?

The Witness: Nothing except the Valley City change of line.

Mr. Donnelly: The Valley City change of line?

The Witness: Yes, sir; and some grade revision work.

Q. But isn't there some road that is contemplated down through the Dakotas that the Northern Pacific is about to build, that they are securing the right-of-way for?

A. Oh, yes, sir.

Q. What is that road?

A. It might be a line from Mandan south, along the river.

Q. I think that is it. Now, how long is that road?

A. 17 miles.

Q. Is there any other line being built?

A. There is another line up the Canon Ball they are buying right-of-way on.

Q. How long is that?

A. 19 1/2 miles.

Q. You have furnished estimates on both of those roads, haven't you?

A. Yes, sir.

Q. I would like to have the estimates of the cost of construction that you prepared and introduced in evidence on all of these roads that you have mentioned. I only care for the total of your estimate as to the cost of construction.

A. The total cost of construction?

Q. Yes, sir. Your total estimated cost of construction of the roads that you have testified to, including these last two.

A. Yes, sir.

Q. And where the roads have been completed, I desire also to have filed the actual cost of construction, so we will see how near they are to the estimates.

A. I think you can get that better from the auditor or comptroller.

Q. Well, the counsel here represent the auditor and comptroller. I don't care where they get it from. I simply request that that be furnished by the complainants, as a matter of testimony in this case. In your estimate here as to the cost of construction in the handling of dirt and rock how much overhaul did you allow?

A. Well, that varies. That exhibit shows in part the overhaul. I think the overhaul on the system for that 60,000,000 yards amounted to about 1 3/4 cents a yard.

Q. About how much of a haul would that be?

A. My estimate, of course, is based on 600 feet free haul.

Q. 600 feet free haul?

A. Yes, sir. Anything over that is hauled generally at the rate of a cent a cubic yard per 100 feet.

Q. And you have the figures and tables upon which all this estimate is based, have you not?

A. Do you mean those exhibits?

Q. No. That must have required a very large amount of figuring?

A. Yes, sir.

Q. I say you have all the figures?

A. Yes, sir, everything is available.

Q. So that they are available for examination?

A. Yes, sir.

Q. I ask that because it will save time, because I would rather have it examined in that sort of a way. Another thing that I desire to ask you about, so as to be sure that I am correct in that—I may have forgotten it: As I understand your freight charge here in this last exhibit, covering both passengers and freight of all kinds, is based upon a haul to what you call the center of gravity of the system?

A. Yes, sir.

Q. A thousand miles?

A. Yes, sir

Q. In transporting men to work and contractors' materials and supplies, do you think, as an engineer, that is fair, Mr. Darling?

A. Why, I certainly do, because it is generally better to haul your stuff in by some other line than it is to haul it over your own line, when you are building anew.

Q. And do you count any back-haul on the passengers—on the men who work in this,—to carry them back home again?

A. No, sir; we don't carry them back home again.

Q. Did you figure that in here?

A. No, sir; except expert laborers. When we hire expert laborers there may be a condition attached that we shall pay their transportation out and return.

Q. Well, have you allowed for that in here?

A. Yes, sir.

Q. Have you allowed a thousand-mile back-haul on all the material of the contractors, too?

A. We have allowed the back-haul, such as it was, on contractors' plant, to whatever point they went. Our contracts provide that we shall furnish free transportation for all con-

tractors, men, tools, and plant, and return them, if they desire, a distance equal to that which they used in going out, or an equivalent distance—equivalent in money, I mean.

Q. And you have allowed for that in here—

A. Yes, sir.

Q. —as though they were taken back?

A. Yes, sir.

Q. Irrespective of whether it was, as a matter of fact?

A. No. We have allowed it exactly on what their transportation shows.

Q. Oh, that is accurate figures in here, is it?

A. Those exhibits here.

Q. I was speaking of in your statement here.

A. No, sir.

Q. Those are not exact figures?

A. No, sir.

Q. But I say in that statement is that basis of a thousand miles back-haul in here?

A. The basis of this statement is that the transportation charges run about what they do, and we get our knowledge from exhibits of that kind, and general knowledge of what actually goes out and comes back.

Q. I understood you to say that it is more economical and cheaper to pay some other line than to do the hauling yourself?

A. Generally, yes, sir.

Q. In your contracts, however, you prefer to do the hauling yourself?

A. Oh, yes.

Q. So therefore you do it in the highest priced way, is that correct?

A. That is the way we do it.

Q. And therefore you are paying more than you ought to?

A. Well, I don't know about that, whether we are paying more than we ought to or not. It depends upon whether there is any profit in that haul or not. They haul it out there to get what profit there is in it. I doubt very much whether there is any profit in it, except in the case of work away out at the further end of the line, and there is a long haul on laborers out there. Then there is probably profit in it; no question about profit in that. But you take the general average all the way through, I doubt if there is any profit in it.

Q. I don't want to be unfair to you. We may misunderstand each other. I understood you to say that it was cheaper

in the long run to pay some other line for transporting men and material—your contractors'—

A. Yes, sir. If you were to build the line across the country—

Q. —than to do it yourself?

Mr. Donnelly: Now, Mr. Teal, you do misunderstand him, if you don't understand him to say throughout that he is doing that in connection with the reproduction of that system. He is not speaking about adding a branch line to the Northern Pacific as it exists today.

Mr. Teal: I see. I have misunderstood him on that.

Q. Then, you remark applies to a system built as you propose to build this?

A. Yes, sir.

Mr. Donnelly: There is one additional sheet here, Mr. Teal, that ought to be added to Complainants' Exhibit 4, showing the mileage not included in the operated mileage statement of April 12, 1909. Just attach that to the end of Exhibit No. 4, so it will be the last sheet.

The Witness: It would properly belong between 1 and 2.

Mr. Donnelly: Well, in connection with that explanation there, that is the best place for it.

Q. Mr. Darling, last evening when you left the stand you stated you would ask whoever prepared the statement covering the equipment as to the method in which that was prepared.

A. I did.

Q. How was it prepared?

A. The cost of reproducing the equipment was prepared by the superintendent of motive power and machinery, and it was on the basis of reproducing that new.

Q. In other words, the numbers are not down here at all, as the number of locomotives and passenger train cars; but can you testify that this statement, of your own knowledge, is based solely on the actual equipment that you have?

A. No, sir. I say that estimate was provided by the superintendent of motive power and machinery, and I could not testify as to the accuracy of it.

Mr. Teal: I would like to give notice that we will want a witness upon that subject.

Mr. Donnelly: Now, Mr. Teal, you were asked specifically that question last night, and you said that all you wanted Mr. Darling to ascertain was as to whether or not depreciation had been allowed in the preparation of these items, and he

got that information. Of course, we are perfectly willing to supply you with the additional information if you want it.

Mr. Teal: Well, I do. And I would state now, that, while desiring to conduct this inquiry with the very best possible feeling, I trust that I will not be misunderstood if at various times in this I ask for things that may create a little trouble, because the information is not in my possession, but is in the possession of the complainants.

Mr. Donnelly: Oh, certainly. That is perfectly proper.

Mr. Teal: And I had understood that that would be done.

Q. But it was based upon the fact that the equipment would be new?

A. Yes, sir.

Q. Now, where is your equipment purchased—well, your locomotives are purchased by contract, of course?

A. Yes, sir.

Q. And you pay so much per locomotive, so much per passenger car, etc.?

A. Yes, sir.

Q. I notice an item here of one per cent for something on that—

A. For mechanical engineering.

Q. Mechanical engineering. What is that for?

A. That was for work done in getting up general designs of power and equipment, the cost of getting up the specifications for building the power and equipment, the cost of inspection, and the cost of all work out on the road in the way of making tests in order to get at the most economical designs.

Q. And that one per cent is not covered in this contingency of ten per cent, is it?

A. No, sir.

Q. That is in addition to any of the other percentages?

A. That is a percentage—you will find that that is shown as item 32. That is merely the details of item 32.

Q. This statement as to it all being new equipment applies to the floating equipment and miscellaneous equipment?

A. Yes, sir.

Q. Tools and everything that has been furnished you by the engineer?

A. Yes, sir.

Q. In the account of ballast here the item is on page 10, if you desire to look at it—it is something over $11,000,000?

A. Yes, sir.

Q. How much of that is freight charge?

A. I don't know whether those exhibits show or not. But it is merely the freight on men, tools and outfit.

Q. What did you say?

A. It is merely the freight on men, tools, and outfit.

Q. And there is a rent of equipment in there, too, isn't there?

A. It is what we call rent of equipment, yes, sir.

Q. That is included in this, isn't it?

A. What I call rent of equipment is repairs to equipment and repairs and renewal account.

Q. Now, as a matter of fact, when a road is ballasted, whether being constructed as this road or any other road, it is ballasted along from year to year and the ballast is gradually built up, isn't it, and you do the work on your own trains?

A. In order to get a first class railroad, that is the way it has got to be done.

Q. And you do that with your own trains, don't you, your own ballast trains and your own men?

A. Yes, sir, generally, except in new construction. If we were going to reconstruct this system we would probably have to let it all by contract.

Q. Yes; but you have taken twelve years to do that?

A. Yes, sir.

Q. Now, you say if you let it all by contract—let us take it that way—that the cost of this road would be the amount you put in?

A. I am afraid if you let the ballasting all to be done by contract it would cost much more. Of course we are figuring here on doing a lot of this work by company force after the work is turned over.

Q. I suppose so. You said the work was 12 years. Now, on tunnels (page 4) I note that you have added ten per cent to the contract price for extra excavation?

A. Yes, sir.

Q. That is, of course, in addition to the ten per cent that those contingencies cover, is it not?

A. This is not a contingency. This is an item that actually occurs. We let a contract for a tunnel, based on a certain price per lineal foot, for a certain section of tunnel. In order to take out that section, they have, of course, to work outside of that section, and they are liable to encounter slides, which they do. Now, that is based on actual knowledge that our overbreak in tunnels runs about ten per cent, and we

pay for that as extra excavation, for which we have a price, and that price is generally about $3 per yard.

Q. Irrespective of this statement here, as an expert, and with your actual knowledge of the situation, what do you say would be the cost of constructing roads, as they are constructed from time to time, as the system is built, compared with the figures that you have put in?

A. Do you mean the same kind of a road and the property that the Northern Pacific had?

Q. Yes; built as roads are built—not under this statement, now.

A. Well, I should say that this estimate would not provide money enough to reproduce the Northern Pacific system in the time in which I figured—twelve years.

Q. That is not the question. I say building railroads as they are built, and as you build them from time to time, and as you are building them today, and from your actual knowledge of the situation, is that estimate too high or too low as to what the road has actually cost, from your figures here?

A. Well, that estimate is not any higher than a road would actually cost built in the way that this has been built, including all facilities.

Mr. Teal: Please read the question.

(The last question was read.)

A. Well, it depends upon the degree of completion you mean. Oftentimes we build a branch line and only partially complete it. Now, those lines are built very cheaply. Oftentimes we build a main line and partially complete it. That can be built sometimes very cheaply. But when you begin to add your facilities, do the ballasting, and add the terminals and the necessary facilities, it brings the cost of the railroad up to just what that would be. In fact, a railroad never is built, never is completed. So that the cost of the railroad depends upon the degree of completion that you have reference to.

Mr. Holden: Those figures, Mr. Darling, contemplate bringing the Northern Pacific system to its present condition?

The Witness: Yes, sir.

Q. I would like, if I can, to get a direct answer to this question. Building railroads as you are building them and as you have built them from day to day, as commercial necessities require, and in the ordinary course of business, and as railroads are ordinarily built, is that estimate too high or too low on the question of construction?

A. There is nothing parallel to that.

Mr. Donnelly: Why don't you put the question in concrete form?

The Witness: I cannot conceive it.

Mr. Donnelly: If you mean has the actual cost of a railroad ever built by the Northern Pacific equaled the cost per mile as shown by that estimate—is that the information that you want to get?

Mr. Teal: Not altogether, because I think there are some miles that have cost that, but I don't think there are many. What I am trying to get from Mr. Darling, as an expert, is a statement in answer to what seems to me a very simple question. He has testified he has been familiar with and been doing railroad business here and railroad construction for 30 to 40 years, and has built roads all that time excepting one year. I ask him now, in the ordinary orderly development of systems of railroads with which he has been connected—roads that he has built and that he is now building—whether or not the cost of construction per mile in this estimate is higher than the cost ordinarily, or whether it is not.

A. Well, this is not an estimate of a railroad. It is an estimate of a system.

Q. Then, you decline to answer the question?

A. I can't. I don't understand it:

Mr. Holden: Why, no.

Mr. Teal: Well, let him answer it.

Mr. Holden: That puts the witness in a very unfair light.

Mr. Teal: I have asked it now in two or three different ways.

Mr. Holden: Ask the question in a way the witness can answer it.

The Witness: If you will give me the degree of completion of a railroad system that you have reference to, I will try to answer you, but I want to know the degree of completion.

Q. Well, we will take the Northern Pacific Railroad, built as it has been built, I will say, so as to bring it down to date, in the last ten or twelve years, since its re-organization,—whether its main and branch lines and sidings have actually cost as much to construct, as that estimate. I mean now actual cost.

A. Yes, sir, I think they have.

Q. You think they have?

A. Yes, sir.

Q. And, of course, since the reorganization your books will show your cost?

A. I am not so sure about that. The comptroller can tes tify to that better than I can.

Q. At any rate, you believe they have cost that much?

A. Yes, sir.

By Mr. Wimbish:

Q. I want to ask just a few questions. Mr. Darling, are you acquainted with the Canadian Pacific system?

A. I have been over portions of it.

Q. How does it compare physically with the Northern Pacific system—I mean as to cost of construction, or reproduction?

A. Well, from what I know of the Canadian Pacific—I have not been over it for two or three years—I should say that the capacity of the Northern Pacific is very much greater than that of the Canadian Pacific, or, in fact, of any other railroad that I know of.

Q. That is not exactly what I want, Mr. Darling. We will take the main line of the Canadian Pacific, say, and the main line, the through line, of the Northern Pacific. Consider the physical difficulties encountered in construction or reconstruction of the road, how do they compare?

A. Well, from my impression I should say that the construction from Winnipeg to the Coast, of the Canadian Pacific would cost for the main line, without taking into consideration facilities or terminals,—I should think it would cost nearly what the Northern Pacific would.

Q. Do you not think it would cost more?

A. I don't think so; because from Winnipeg to the foot of the mountains they have a very cheap class of construction—much cheaper than anything we have; but from the foot of the mountains west to Vancouver their construction is very expensive. It is pretty hard work to compare two railroads that are 1800 miles long, without giving it considerable thought.

Q. I only want your opinion in a general way, Mr. Darling. Of course I know you have made no estimates on the Canadian Pacific, and I do not expect any such detail in your answer; but generally I want to compare the Northern Pacific system with the Canadian Pacific system.

A. When I answered your question I was merely comparing one line of railroad right through—not facilities, because I don't know anything about the Canadian Pacific facilities.

Q. What do you figure would be the re-construction cost of the Northern Pacific system, eliminating the terminals in the principal cities, say St. Paul, Minneapolis, Duluth, Seattle, Tacoma, and Portland?

A. That runs about $80,000 a mile.
Q. About $80,000 a mile.
A. Yes, sir.
Q. Have you any definite idea of the value of the Canadian Pacific system, eliminating its principal terminals?
A. No, sir.
Q. Are you familiar with the lines of the Pennsylvania Railroad east of Pittsburg?
A. I have been over them. I am not familiar with their cost of reproduction or anything of that kind.
Q. You know the general character of the road?
A. Yes, sir.
Q. And of the country?
A. Yes, sir.
Q. How would you say that those lines compare in value with the lines of the Northern Pacific?
A. That would be very hard—I couldn't answer you at all.
Q. Would you say they were greater, or less?
A. Do you mean per mile of single track? Some of those lines are four-track.
Q. No; I am taking the lines east of Pittsburg, without regard to their expensive terminals, because we all understand that is a very varying quantity; but I want to get, if I can, your view of the comparative value of the lines of the Pennsylvania east of Pittsburg, as a railroad system and as compared with those of the Northern Pacific.
A. I could not answer that question. I could not give you any comparison, although I have been over that line a great many times, yet I never have been on the hind end very much to see the character of the counrty and see the character of the construction.
Q. How do the lines of the Pennsylvania west of Pittsburg compare with the Northern Pacific system—always eliminating terminals?
A. I could not tell you that. I wouldn't like to answer that question, because I don't know. I don't know enough about that.
Q. Are you familiar with the lines of the New York Central?
A. I am more familiar with the lines of the Lake Shore from Chicago east, than with the New York Central. But those lines were originally very cheap lines. They are along the lake shore, and it is very easy material to handle, and a very small amount of yardage involved.
Q. Mr. Darling, how would you say that the lines of the

New York Central from Buffalo to New York City would compare in value with the lines of the Northern Pacific?

A. Compare in value?

Q. Yes; or the cost of construction, or re-construction, whichever you choose to make it.

A. That is a pretty hard thing to say. I should say it would cost very much less than the Northern Pacific, the way I remember it; but I wouldn't want to go on record as to that at all.

Q. Have you any idea what it would cost to reproduce the New York Central, including its New York terminals?

A. No, sir, I have not. I imagine it would be enormous, though.

Q. Don't you know it would be enromous?

A. I think it would, yes.

Q. Don't you think it would be practically impossible?

A. You could not re-produce the New York terminals.

Q. You could not reproduce them at all?

A. I don't think so.

Q. How about the Pennsylvania? Don't you think it would go up enormously high if you tried to reproduce the Pennsylvania system east of Pittsburg?

A. Why, it certainly would.

Q. In other words, Mr. Darling, do you think that a hypothetical (using that word) estimate of the cost of reconstruction, made up in the way you have made that statement, reflects in any fair way the value of a road?

A. I don't think it reflects the value of the road at all. This is merely the cost of reproducing some physical things.

By Mr. Dillard:

Q. If it is an old established road, with a good-will and a good business, its value would be more than the value of the physical properties, would it not, Mr. Darling?

A. Not only that; but the value of the road itself today on the Northern Pacific is far greater than that would represent. You could not make it in twelve years in the condition that it is today, to do the business it is doing and in the time that it is doing it.

Q. Time adds even to the physical properties a certain value which nothing else can give to it, does it not?

A. Yes, sir; it would be impossible to run fast passenger trains over the Northern Pacific after twelve years of construction, as compared with the way they run them today.

By Mr. Walter:

Q. Mr. Darling, how long ago did you begin the preparation of this table?

A. This table here?

Q. Yes, sir.

A. This table I have been compiling for the last two years, from the time the Spokane rate case began.

Q. During that time how many different persons have been engaged with you in the preparation of it?

A. I could not say how many, but a great many.

Q. And you conferred with each other often during the course of the preparation?

A. Yes, sir.

Q. And you have compared figures?

A. Yes, sir.

Q. And you changed them from time to time?

A. Yes, sir.

Q. That applies as to practically every item there?

A. Why, more or less it does. I couldn't say it does to every item.

Q. And it is true that the items are, as a rule, much larger than when they were first made—the totals?

A. Well, take from item 3 to 32, inclusive. I don't think there is hardly any difference.

Mr. Donnelly: Some of them are in fact lower, aren't they?

The Witness: Some of them are a little lower. We found some errors. Take, for instance, locomotives: we found an error of $3,000,000. That was reduced $3,000,000.

Q. Can you give me any other items in there that you have reduced in any appreciable amount in the last two years?

A. No, sir, I think not. I don't know of any that have been reduced.

Q. Most of them have been increased rather than decreased?

A. Increased by the additional work we have done since; but there have been no—

Q. And the purpose of the additional work was to get additional amounts to add to these various items?

Mr. Donnelly: No; he means the additional construction work, Mr. Walter.

Mr. Walter: Well, he can explain that.

The Witness: Well, the additions to these estimates were due to the work done since 1906 and 1907, of which there has been a great many million dollars worth.

Q. Do you want to be understand as saying that the items you have embraced from 3 to 33 (excluding 33) that those

items have been increased only by the amounts actually expended in the past two years?

A. Very little if any more.

Q. Haven't you discovered much additional data from which to compile these figures?

A. We have found a great deal of data in order to compile exhibits, and have done a great deal of work in getting up and checking over the item of grading, clearing and grubbing; but outside of that, the amount of work done is very little, because the rest of it is a matter of record. We have them on our books, and we know just what we have got.

Q. These various items—of how many of them did you personally prepare the detail from your original record?

A. I don't think there is a single one that I have personally prepared, taken all the figures and done all the work in connection with it. I don't think there is a single one of them that I personally prepared.

Q. They have all been more or less prepared by parties other than yourself?

A. Under my direction, yes, sir.

Q. And it was all done from the original—that is, from the beginning of the Spokane case, it was begun with the purpose of showing that your rates did not give you the revenue you were entitled to?

A. I presume that is what the case was being tried for.

Q. Yes.

A. This estimate had nothing to do with the rate case. As far as I am concerned, this estimate is the cost of reproducing this property, regardless of any case.

Q. Of course you understand that the more valuable and the greater sum it cost to reproduce, the greater revenue you might perhaps be entitled to charge?

A. Possibly.

Q. And it was with a view to establishing the contentions of your company that these various items were prepared?

A. Well, that is perhaps what the counsel wanted it for, but my estimates had nothing to do with that.

Q. During that time how many different departments have worked on this table?

A. The superintendent of telegraph—

Q. Well, in short, practically all, haven't they?

A. No, sir.

Q. What ones have not contributed in anywise to that?

Mr. Dillard: Let him tell what has. Maybe he can do better by that.

Mr. Walter: I thought exclusion might be the shorter.

The Witness: For instance, I don't think the legal department has done anything on this.

Q. They have had nothing whatever to do with it?

A. No, sir.

Q. And the expense of the legal department and its operation has not in anywise contributed?

A. Not that I know of.

Q. You haven't had in mind the reproduction of your legal department at all?

A. No, sir.

Mr. Holden: That would be impossible.

Q. Aside from the legal department, practically every department has contributed its share to the table you have offered in evidence?

A. By consultation, yes.

Q. So far as you are concerned, of your own personal knowledge, and speaking absolutely, you have only the faintest idea as to the correctness of the detail from which this table was made?

A. Well, I have a very full idea, because after a piece of work is completed a man always has checks to see whether it is in reason or not, or to see whether it is anywhere near correct.

Q. All you are speaking about now is to see whether the joints all connect up properly or not?

A. No, sir. For instance, here is item 3—one of the largest items we have got—grading, clearing and grubbing. You take the number of cubic yards of material that is included in that mileage, divide it by the number of miles, and you get at the total number of cubic yards per mile. Now, that gives you a very close idea of the yardage in the system; and I know from personal experience about how much a certain line will run per mile.

Q. Now, that is your judgment?

A. Yes, sir, that is my judgment.

Q. You don't know the detailed facts from which these figures were made so that you can say of your own knowledge that they are absolutely correct?

A. No, sir, I do not. I know nothing except each one of these parties was given certain work to do, and they were checked by certain other parties. Beyond that I don't know anything about it, so far as the details are concerned.

By Mr. Dillard:

Q. Mr. Darling, when you build a railroad, as chief engi-

neer you don't know the reading of every compass every time every Jacob's staff is erected, do you?

A. No, sir, I don't know anything about it.

Q. You don't know every tangent that is put in?

A. No, sir.

Q. And yet you do know what that work has cost, or will cost, so as to make your estimates on it?

A. Yes, sir. Sometimes I fall down awfully; but I try to.

By Mr. Donnelly:

Q. The information contained in that statement, Mr. Darling, is all drawn from the right-of-way department and the engineering department, is it not—the first statement there as to the cost of the right-of-way?

A. Yes, sir.

Q. And the rest of it is all from the engineering department?

A. No, sir.

Q. What items are there that are not?

A. Those having anything to do with the equipment and the motive power are from the superintendent of motive power and machinery; anything having to do with the telegraph and telephone is from the telegraph department.

Q. And they are distinct from the engineering department?

A. Yes, sir.

Q. And what other items are there?

A. The rest we get from our own records.

Q. Now, in order to get the theory upon which this estimate has been made fully in the mind of the Master, Mr. Darling: you have assumed, as I understand you, in starting the preparation of this estimate, that you were here in St. Paul without a particle of road built, without a particle of right-of-way or terminal grounds anywhere, and with the problem placed before you of reproducing that Northern Pacific railroad as it is shown on that map—not a particle of work of any kind having been done?

A. That is correct.

Q. That is correct, is it?

A. Yes.

Q. And that you are to reproduce it in the quickest time in which it can economically be reproduced?

A. Yes, sir.

Q. You don't contemplate actually earning money on it as you go along—

A. No, sir.

Q. —except in so far as you are operating the property. The problem is to reproduce it in the quickest time in which it can economically be reproduced?

A. Yes, sir.

Q. And that time you figure is 12 years?

A. Yes, sir.

Q. Now, of course, you are not a financier?

A. No, sir, I am sorry to say.

Q. You are an engineer. The question as to the rate of interest that would be charged upon the money that would go into the property is a question, of course, upon which you simply assumed this rate of interest?

A. Yes, sir.

Q. That is not an engineering question?

A. No, sir.

Q. Now, on the question of the payment of freight on material hauled; what has been the actual experience in the construction of these trans-continental lines, Mr. Darling, as to whether the freight or the material has as a rule, been carried over other lines than the lines actually in course of construction?

A. The only roads that I know of that can be at all compared to a system like this are the Great Northern and the Puget Sound road which has recently been constructed. Those roads had to be constructed like all other roads have to be constructed—all other large roads—by the aid of some other road. The Great Northern used the Northern Pacific for its construction; the Milwaukee or Puget Sound road used the Northern Pacific and the Union Pacific for its construction.

Q. Take the Milwaukee as an example. Do you know to what points on the Northern Pacific the material used in the construction of that road was hauled?

A. Yes, sir.

Q. Just give them to the master.

A. Their method of construction was to begin track laying, ballasting, putting in their facilities from different points. They began at the Missouri river and worked west, using their own line. They started another construction outfit at Terry, where they first struck the Northern Pacific line, and they hauled in the material and worked both ways from Terry.

Q. Hauled it in over the Northern Pacific?

A. Yes, sir. And then they intersected the Northern Pacific again at Lombard. They put in outfits there and worked each way from Lombard. They did the same way at Butte;

they hauled material into Butte over the Northern Pacific and over the Union Pacific. They did the same thing at Houston, a station just west of Missoula. They brought in a great amount of material there and worked east and west from Houston, laid their track and ballasted it and brought in their ties and other construction material. They used the Northern Pacific all the way from St. Regis, where they leave the Missouri river to go over the mountains—they used the Northern Pacific clear up to a place called Taft, brought in all the material that way for construction, over the mountains—or, rather, over the east side of the mountains. On the west side of the mountains they used the Union Pacific, coming in on one of the branch lines of the Palouse country. Material was brought in that way. They worked each way from there for the steel bridges, for the track and for the ties. And they put in a material yard at Lind, and worked each way from Lind, Washington. They did the same thing at a point called Thorpe, just west of Ellensburg; worked each way from there. And then other material was brought in to Seattle and Tacoma and they did some of the work from there.

Q. Now, for a road actually under construction, isn't it cheaper, as a rule, to have the material hauled over another line than it is to haul it over the line in course of construction, in view of the derangement of the construction work?

A. You have got to do that in order to expedite the work and make it more economical. Take, for instance, the Northern Pacific: they had to do their work, a great portion of it, from Dillon—or not exactly from Dillon, but a point farther north than Dillon—it is the northerly end of the Utah Northern, anyway. The material was brought in there and they worked each way from there.

Q. That is to say, in the construction of the Northern Pacific—

A. Yes, sir.

Q. —the Union Pacific lines were actually utilized in getting material there?

A. Yes, sir; and the O. R. & N. used it from the west end, working up this way, toward the east.

Q. Now, Mr. Teal has spoken about the cost of construction of the Milwaukee road—that is, the Coast extension of that line. What difference is there between the Milwaukee road, or the Coast extension of it at the present time, and the Northern Pacific? Is the Milwaukee Coast extension as it stands to-day as good a railroad as the Northern Pacific is?

A. Merely its foundation. They have got a good foundation to begin a railroad on. They have got their line laid and graded and track on and some ballast on, but it can never be in the condition that the Northern Pacific is until a certain amount of time has elapsed.

Q. In what respects is it inferior now as to ballasting and as to the appurtenances and things of that kind?

A. It hasn't the facilities in the first place. That has got to grow up with the line. Then, the road-bed is not settled, the ballast is not in shape and cannot be made in shape; the slopes of the excavations and of the embankments are not in the shape the Northern Pacific are, and cannot be until a certain time has elapsed. In other words, they could not begin to operate fast trains similar to those operated by the Northern Pacific, and probably cannot for several years.

Q. The Spokane, Portland & Seattle, I think you have said, has cost in excess of $100,000 a mile?

A. That is my impression, yes.

Q. Is that road as it stands to-day in as good condition as the Northern Pacific main line from here to the Coast?

A. No, sir. But of course there is one thing to say about that road. A great portion of it is through rock, and it does not require the settlement and time that other roads may need.

Q. But in this actual cost of that road, that you have spoken of no allowance at all has been made for interest on the money that has been expended in constructing it?

A. No, sir; none whatever. There has been no interest allowed in this estimate for anything under construction.

Q. Assuming that you would start to reproduce the Northern Pacific system on the plan that you have spoken of—that is, getting through the construction work just as rapidly as you could—is it likely, in your judgment, that any considerable portion of that line would be earning returns in excess of the cost of operation of it?

A. No, sir, I think not.

By Mr. Teal:

Q. Just one or two questions. Didn't you speak of a line that you could furnish figures on—a line change from Muskoda to Glyndon?

A. Yes, sir.

Q. How far is that?

A. How far is that from here?

Q. No, how long.

A. About 24 miles, I believe.

Q. Did you meet any unusual difficulties in the construction of that line?

A. Yes, sir.

Q. Quicksand and stuff of that kind, didn't you?

A. Yes, sir.

Q. It made the cost run up very much, didn't it?

A. Yes, sir.

Q. You wouldn't call that an average line change?

A. I wouldn't call that an average piece of line under any condition.

Q. That is what I mean. Now, you speak of the Great Northern being a road somewhat similar to the Northern Pacific in building. What roads did you say hauled the material to the Great Northern in the course of its construction?

A. I don't know about the track, but for the men, tools and material that went out there I would say the Northern Pacific hauled the greater part of it.

Q. You are familiar with the construction of the Union Pacific and Central Pacific?

A. No. sir; only by reading.

Q. Well, I mean as an engineer you are?

A. Yes, sir.

Q. You, of course, know when they were constructing there were no railroads across the country?

A. Yes, sir.

Q. And how did they get their material to the front?

A. They freighted it entirely.

Mr. Holden: What do you mean by "freighted it"?

A. By team—men, tools, outfit, and plant.

Q. You think, then, the original cost of construction of that road would be a great deal more than the Northern Pacific?

A. Yes, sir; I do, for equal pieces of work.

Q. Yes, I mean taking the original cost of the Union Pacific and the original cost of the Central Pacific.

A. Yes, sir. I mean to say that the unit prices for grading or for anything of that kind, anything that goes to make up a railroad, would be more than it would be on the Northern Pacific.

Q. I don't suppose you know what the original cost of the Great Northern was, do you?

A. No, sir.

Q. Do you remember whether Col. Clough testified in a case as to the original cost of the Northern Pacific?

A. No, sir; I don't know.

Q. I mean the Great Northern.
A. I don't know, sir.
Q. Col. Clough is considered a skillful engineer, isn't he?
A. Yes, sir.
Col. Clough: I am not an engineer.
The Witness: He means somebody else—another Col. Clough.
Col. Clough: It must be.
Mr. Teal: Col. Clough testified in the Great Northern as to the original cost.
Col. Clough: I don't think so. That is a mistake.
By Mr. Walter:
Q. At the end of the year 5 you would have the main line in operation for the benefit of traffic from St. Paul to Fargo, from St. Paul to Duluth, and Duluth to Staples—573 miles?
A. In temporary condition, yes, sir.
Q. So as to operate traffic?
A. Yes, sir.
Q. Now, do you want to let your testimony stand that for the next seven years the cost of operating over that line of track would be greater than the revenue you would get from the freight you hauled?
A. I think so, yes, sir.
Q. And you are just as certain of that as you are of the rest of your testimony?
A. Exactly; so far as credit for transportation is concerned.
Q. And in none of your tables do you take account of a single dollar of revenue received by the company for hauling freight?
A. No, sir.
By the Master:
Q. Mr. Darling, I don't quite understand the basis of this interest charge, this charge of $164,000,000 interest. Upon what sum is that charged and for what period?
A. That is shown very much in detail on the last sheet of that exhibit.
Mr. Walter: What page is it?
Mr. Donnelly: Page 34.
By Mr. Teal:
Q. In connection with that, under your theory you purchase all of your terminals?
A. Yes, sir.
Q. And receive no income for twelve years?
A. No, sir.

Q. And pay six per cent. interest all the time?
A. Yes. sir.
Mr. Donnelly: Are all the terminals included there in the first three years?
The Witness: The principal terminals; yes, sir.
Q. What we are speaking of as terminals are St. Paul, Duluth?
A. Yes, and even Spokane.
Q. And Seattle?
A. The principal terminals.
Q. The things we have always been speaking of as the principal terminals?
A. They are all shown there on that sheet.
The Master: Does this show the period for which the interest is charged?
The Witness: Yes, sir.
(A recess was here taken until 2 o'clock P. M.)

CHARLES HAYDEN, being duly sworn as a witness on behalf of the complainants, testified as follows:

Direct Examination.

By Mr. Holden:
Q. Mr. Hayden, you are connected with the Great Northern Railway Company?
A. Yes, sir.
Q. In what capacity?
A. I am now assistant right of way commissioner.
Q. How long have you been engaged in railroad work?
A. In railroad work about 32 years.
Q. Will you state briefly the nature and extent of your railroad work during that period?
A. I started out as rodman in engineering work, with the Green Bay & Minnesota Road in Wisconsin. I was afterwards with the Madera and Mamore Railroad in Brazil, South America, as assistant engineer on location and construction. Later I was with the Pennsylvania Railroad as assistant engineer of right of way at Blairsville; I was with that company for about seven years, up to the time I came west. I was with the Union Pacific for a short time in the construction department, engineering department. I then came with the St. Paul,

Minneapolis & Manitoba Railway Company, in 1887, and have been with the company constantly ever since, in the right of way department, with the exception of the year 1890, when I was in California on railroad surveys, returning to this company in 1891.

Q. The St. Paul, Minneapolis & Manitoba is the predecessor company of the Great Northern?

A. Yes, sir.

Q. How many years, then, have you been connected with the Great Northern property?

A. About 22 years, with the exception of 1890.

Q. And during that period have you been largely connected with the right of way and land department?

A. Altogether, yes, sir.

Q. Will you state briefly the nature of your work in that connection?

A. I entered the right of way department as chief clerk in 1887 and held that position until 1894, when I was made assistant right of way and tax commissioner. In 1903, in January, I was made right of way and tax commissioner of the company, which position I held until December 31, 1906, when I was made assistant commisssioner and the department somewhat changed.

Q. State what the character of your work has been in connection with right of way matters.

A. In connection with right of way work I have had practically everything that is to be done in the department—the keeping of records, the platting of deeds, the securing of contracts in the field, the direction of field agents in securing contracts and deeds, negotiating purchases of right of way and terminals, station grounds; in fact everything that has to be done in the department in connection with right of way work.

Q. And has that experience extended over all portions, substantially, of the Great Northern system?

A. Practically all of it; yes, sir.

Q. And have you had to do not only with the acquiring of new portion of right of way and also with the acquiring of additional right of way to the present lands owned, for enlargements and things of that kind?

A. Yes, sir.

Q. And has your work led you into transactions in land both in the country, in the different states, as well as in the towns and villages and the larger cities where the system lies?

A. Yes, sir, it has.

Q. Can you give some idea in round figures of the amount of property that you have had to do with in purchasing for the company, in recent years for instance?

A. I have never made any tabulated statement of the area or the consideration paid, but since I have been with the company, since 1887, the road has increased probably five thousand miles of main line, and I would say, roughly, in that time it acquired a hundred thousand acres of right of way and station grounds, at a cost of between eight and ten million dollars. That would be just the rough figures, Mr. Holden.

Q. I want simply something to indicate the nature and extent of your experience. From what you have stated to us, are you able to say whether you have an opinion as to whether you are familiar with the present values of the right of way and station grounds of this system; or, putting it differently, have you such a knowledge of values as would enable you to make an estimate of what it would cost to reproduce those lines throughout the system?

A. I have, yes, sir.

Q. Have you prepared such a statement at the request of the counsel in this case?

A. I have.

Q. I wish you would produce it and we will have it marked Complainants' Exhibit 11 (Hayden).

A document was produced by the witness and so marked.

COMPLAINANT'S EXHIBIT 11 (HAYDEN).

GREAT NORTHERN RAILWAY
(SYSTEM)
GENERAL SUMMARY.

RIGHT OF WAY, STATION GROUNDS AND TERMINALS ON LINES IN OPERATION.

Location.	Miles.	Right of Way and Station Grounds outside of Terminals.	Value of Terminals.	Total Value.
Wisconsin	32.19	$ 84,253	$ 1,275,265	$ 1,359,518
Minnesota	2,056.07	7,100,379	23,535,542	30,635,921
North Dakota	1,544.53	8,376,664	1,912,220	10,288,884
South Dakota	262.36	1,389,336	.....	1,389,336
Iowa	77.86	319,200	1,681,544	2,000,744
Montana	1,368.65	3,273,402	1,784,878	5,058,280
Idaho	106.03	205,000	.....	205,000
Washington	814.86	3,105,328	30,255,110	33,360,438
Manitoba	161.71	358,903	.....	358,903
British Columbia	336.40	877,020	2,291,700	3,168,720
Total	6,760.66	$25,089,485	$62,736,259	$87,825,744

TERMINALS ON LINES IN OPERATION.

Location.	Acres.	Average Value per Acre.	Value Property.
St. Paul	354.12	$22,709	$ 8,041,686
Minneapolis	401.59	36,168	14,524,704
Duluth	27.19	35,644	969,152
Superior	686.40	1,858	1,275,265
Grand Forks	131.41	7,000	919,870
Devil's Lake	276.15	2,000	552,300
Minot	88.01	5,000	440,050
Sioux City	216.46	7,768	1,681,544
Great Falls	620.85	706	438,367
Helena	258.75	1,343	346,511
Butte	72.00	13,889	1,000,000
Spokane	315.68	11,879	3,750,000
Anacortes	25.00	4,000	100,000
Everett	250.00	6,000	1,500,000
Bellingham	108.00	7,639	825,000
Seattle	375.41	64,144	24,080,110
Vancouver	110.25	20,786	2,291,700
Total	4,317.27	$ 14,531	$62,736,259

TERMINALS ON LINES UNDER CONSTRUCTION.

Location.	Acres.	Average Value per Acre.	Value Property.
Winnipeg	259.32	4,563.61	$ 1,183,436
Tacoma	17.00	20,000.00	340,000
Total	276.32		$ 1,523,436

GREAT NORTHERN INTEREST IN OTHER TERMINAL COMPANIES.

St. Paul—Minnesota Transfer Ry. Co., G. N. 1/10	$ 575,619
St. Paul—St. Paul Union Depot Co., G. N., 1/9	610,572
Superior—Lake Superior Terminal & Transfer Ry. Co., of Wis., G. N., 1/3	116,725
Total	$1,302,916

RECAPITULATION.

RIGHT OF WAY AND STATION GROUNDS ON LINES IN OPERATION, EXCLUSIVE OF TERMINALS, SHOWN ON PRECEDING SHEET NO. 2, BUT INCLUDING RIGHT OF WAY AND STATION GROUNDS IN 370 VILLAGES, TOWNS AND CITIES OF OVER 200 INHABITANTS EACH.

Location.	Miles.	Av. Rate per Mi.	Acres.	Av. Rate per Acre.	Amount.	Page. No.
Wisconsin	26.79	$3,146	520.63	$162	$ 84,253	4
Minnesota	2,029.44	3,498	35,273.42	201	7,100,379	5, 6
North Dakota	1,532.73	5,465	27,836.75	301	8,376,664	7
South Dakota	262.36	5,297	4,355.00	319	1,389,336	8
Iowa	76.58	4,168	1,064.00	300	319,200	9
Montana	1,342.47	2,438	31,600.74	104	3,273,402	10
Idaho	106.03	1,933	2,050.00	100	205,000	11
Washington	771.13	4,026	14,771.96	210	3,105,328	12
Manitoba	161.71	2,219	2,514.00	143	358,903	13
British Columbia	333.40	2,631	4,974.44	176	877,020	14
Totals	6,642.64	$3,777	124,960.94	$201	$25,089,485	

ON LINES UNDER CONSTRUCTION.

Minnesota	743.65	$31.34	23,206.87
Montana	1,767.92	44.61	78,866.00
Washington	621.06	70.53	43,804.61
British Columbia	1,077.80	104.64	112,778.87
Total	4,210.43	61.43	258,656.35

WISCONSIN.

Location.	Acres.	Average Rate per Acre.	Total Value.
Foxboro to S. Limits Superior	321.90	$ 200.00	$ 64,380
Boyleston to State Line	198.73	100.00	19,873
	520.63	162.00	84,253
Superior Terminals	357.68	$2,000.00	$ 715,360
West Superior, Und. ½ 321.45	160.72	347.83	55,905
Bay Front	168.00	3,000.00	504,000
	686.40	$1,857.90	$1,275,265
Total in State			$1,359,516

MINNESOTA.

RIGHT OF WAY OUTSIDE OF TERMINALS AT ST. PAUL, MINNEAPOLIS AND DULUTH.

	Location.	Acres.	Average Value per Acre.	Amount.
4.	City Limits Mpls. at Cedar Lake to State Line at Breckenridge	4,041.13	$304.50	$1,230,542
5.	Hopkins Spur	37.53	300.00	11,259
6.	Old Spring Park Jct. to Hutchinson	645.86	360.78	233,018
7.	W. & S. F. Jct. to Jasper (State Line)	2,288.37	217.57	497,885
8.	Old Sioux City & Northern in Minn	194.91	243.56	47,472
9.	Benson Jct. to Nassau (State Line)	686.92	206.21	141,663
10.	Morris Jct. to Brown's Valley	913.07	198.50	181,243
11.	Yarmouth Jct. to Childs	137.55	120.00	16,505
12.	Northtown Jct. to Sauk Rapids	484.75	223.20	108,198
13.	Elk River to Milaca Jct	435.93	123.40	53,793
14.	East St. Cloud to Hinckley	981.93	153.59	150,818
15.	Clearwater Jct. to St. Cloud, including Spur to Dam	839.98	299.41	251,497

	Location.	Acres.	Average Value per Acre.	Amount.
16.	Willmar Jct. to St. Cloud (W. End)	906.12	$ 223.61	$ 202,625
17.	E. St. Cloud (E. Switch) to Barnesville, (E. Hd. Block)	3,125.59	277.55	867,500
18.	Sauk Center Jct. to Park Rapids (1,000' W. of Depot)	1,513.17	164.85	249,451
19.	Park Rapids to Cass Lake	804.48	96.66	77,758
20.	Evansville Jct. to Tintah	504.39	150.00	75,658
21.	Fergus Falls Jct. to Pelican Rapids	316.75	205.01	64,938
22.	Moorhead to Brushvale (State Line)	494.45	175.43	86,739
23.	Barnesville N. to Moorhead	339.71	312.10	106,044
24.	Barnesville E. to Noyes and St. Vincent	3,791.09	253.22	959,965
25.	Moorhead to Carman Jct	919.09	172.90	158,913
26.	Crookston Jct. to East Grand Forks (State Line)	366.32	356.83	130,713
27.	Ives (end of track), to St. Hilaire	236.20	84.33	19,920
28.	Red Lake Falls Jct. to Thief River Falls.	308.86	256.92	79,352
29.	Thief River Falls to Greenbush	828.44	61.43	50,894
30.	Carman Jct. to Fosston	1,078.31	128.05	138,083
31.	Coon Creek to Hinckley	996.68	176.09	175,508
32.	Sandstone Spur	39.63	74.94	2,972
33.	Hinckley to Foxboro	840.75	189.95	159,703
35.	State Line to Cloquet (1,970' E. of Depot)	299.93	122.33	36,842
36.	Cloquet to Deer River	1,456.14	123.89	180,410
37.	Brookston to Ellis	732.88	30.00	21,987
38.	Mississippi to Dewey Lake	794.24	144.95	115,126
39.	Chisholm to Virginia	294.80	154.47	45,538
40.	Kelly Lake to Flanders (via Emmert)	157.69	35.70	5,629
41.	Mining Spur	405.18	90.00	36,466
42.	Deer River to Fosston	1,668.87	71.29	118,974
46.	Kelly Lake to Fermoy	365.73	24.00	8,778
	Total	35,273.42	$201.29	$7,100,379

The above figures include station grounds and yards at all stations except St. Paul, Minneapolis and Duluth.

TERMINALS.

Location.	Acres.	Average Value per Acre.	Amount.
St. Paul	354.12	$22,709.00	$ 8,041,686
Minneapolis	401.59	36,168.00	14,524,704
Duluth	27.19	35,644.00	969,152
Total			$ 23,535,542
Total in State			$ 30,635,921

NORTH DAKOTA.

Location.	Acres.	Av. Value per Acre.	Amount.
Fargo to International Boundary	3,052.60	$432.00	$1,318,723.00
Grand Forks to Minot	5,364.76	317.55	1,703,604.00
Minot to Montana State Line	2,374.94	350.00	831,229.00
Grafton to Walhalla	693.16	350.00	242,606.00
Lakota to Sarlos	1,068.01	300.00	320,403.00
Churches Ferry-Int. Bdy. (via St. John)	1,245.60	300.00	373,680.00
York to Dunseith	614.73	200.00	122,946.00
Rugby to Antler	1,315.17	250.00	328,792.00
Towner to Maxbass	636.63	200.00	127,326.00
Granville to Sherwood	920.45	200.00	184,090.00
Berthold to Crosby	1,336.86	250.00	334,215.00
Halsted to Alton in North Dakota	109.00	200.00	21,800.00
Addison to Chaffee	167.01	200.00	33,402.00
Casselton to Portland Jct. (via Mayville)	844.59	300.00	253,377.00
Rutland to Aberdeen Line in N. Dak	126.65	150.00	18,997.00
Ellendale Line	1,646.22	200.00	329,244.00
Wahpeton to Larimore (via Portland)	2,184.65	300.00	655,395.00
Ripon to Aneta	1,084.13	300.00	325,239.00
Wahpeton to Moorhead in North Dakota	82.30	250.00	20,575.00
Larimore to Hannah	1,773.98	300.00	532,194.00
Aneta to Devil's Lake	1,195.31	250.00	298,827.00
Total outside of terminals	27,836.75	$300.92	$8,376,664.00
TERMINALS.			
Grand Forks	131.41	$7,000.00	$ 919,870.00
Devil's Lake	276.15	2,000.00	552,300.00
Minot	88.01	5,000.00	440,050.00
Total Terminals	495.57	$3,858.52	$1,912,220.00
State exclusive of terminals above shown	27,836.75	300.92	8,376,664.00
Total for State	28,332.32	$ 363.15	10,288,884.00

SOUTH DAKOTA.

Location.	Acres.	Av. value per Acre.	Amount
Minnesota State Line to Yankton	1,453.00	$537.00	$ 781,666
Sioux City Line (on South Dakota)	115.66	248.00	28,670
Aberdeen Branch	840.14	298.00	250,000
Huron Branch	1,946.38	170.00	329,000
Total	4,355.18		$1,389,336

IOWA.

Location.	Acres.	Av. Value per Acre.	Amount.
Minnesota State Line to Sioux City	1,064.00	$300.00	$319,200.00
SIOUX CITY TERMINALS.			
W. & S. F. outside yard	155.05	500.00	77,525.00
Iowa & G. N. Terminal	26.56	11,446.49	304,019.00
Union Terminal Ry. Co	34.85	37,302.72	1,300,000.00
Total Terminals	216.46	$7,768.38	$1,681,544.00
Total for State	1,280.46	$1,562.52	$2,000,744.00

MONTANA.

Location.	Acres.	Av. rate per Acre.	Amount.
1. Dakota State Line to Havre	6,425.56	$111.00	$ 812,357
2. Havre to Whitefish	6,557.32	65.00	426,226
3. Whitefish to Idaho State Line	3,738.88	100.00	373,888
4. Rexford Jct. to Gateway	143.01	67.09	9,695
5. Columbia Falls to Lakeview	1,080.44	252.90	273,340
6. Somers Branch	194.00	168.81	32,750
7. Havre to Great Falls	3,305.89	129.92	429,515
8. Great Falls to Butte	2,908.68	184.32	516,127
9. Great Falls to Neihart	1,165.36	75.00	87,402
10. Sand Coulee Branch	212.46	63.50	13,492
11. Cottonwood Coal Branch	54.54	75.00	4,089
12. Mountain View Spur at Butte	40.96	750.00	30,720
13. Great Falls to Sweetgrass (International Boundary)	3,107.54	62.00	192,667
14. Armington to Judith Gap	2,666.10	26.70	71,134
Amount outside of Terminals	31,600.74	103.59	3,273,402

MONTANA—CONTINUED.

TERMINALS.	Acres.	Av. Value per Acre.	Amount.
Great Falls	620.85	$706.07	$ 438,367
Helena	258.75	1,343.04	346,511
Butte	72.00	13,888.89	1,000,000
Amount	951.60	.....	$1,784,878
Total for State			$5,058,280

IDAHO.

Description.	Miles.	Acres.	Rate per Acre.	Total Valuation.
G. N. Main Line	80.24	1,650.00	$100.00	$165,000
Kootenai Valley Ry	25.79	400.00	100.00	40,000
Total	106.03	2,050.00	$100.00	$205,000

WASHINGTON.

Location.	Acres.	Av. Value per Acre.	Amount.
Idaho State Line to Everett	8,050.60	$211.49	$1,702,600
Everett to Ballard	325.00	526.15	171,000
Everett to International Bdy. at Blaine	1,145.06	550.12	630,000
Anacortes to Rockport	787.42	124.00	97,650
Hillyard to Int. Bdy. at Northport	2,566.42	109.42	279,600
Washington & Great Northern Line	1,729.46	123.61	213,678
Columbia & Red Mountain Ry	168.00	60.00	10,800
Total in State, outside of Terminals	14,771.96	$210.20	$3,105,328
TERMINALS.			
Spokane	315.68	$11,879	$3,750,000
Bellingham	108.00	7,639	825,000
Anacortes	25.00	4,000	100,000
Everett	250.00	6,000	1,500,000
Seattle	375.41	64,144	24,080,110
Total Terminals	.....	.....	$30,255,110
Total in State	.....	.....	$33,360,438

LINES IN MANITOBA, CANADA.

Location.	Acres.	Av. Value per Acre.	Total Value.
B. S. & H. B. Ry., Brandon Line	1,162	$158.51	$184,185.00
Midland Ry. of Manitoba, Portage La Prairie Line	1,109	132.30	146,718.00
Midland Ry. of Manitoba, Morden Line	243	115.23	28,000.00
Total	2,514	$142.76	$358,903.00

BRITISH COLUMBIA LINES.

Description.	Acres.	Av. Value per Acre.	Amount.
VANCOUVER, VICTORIA & EASTERN RY. & NAV. CO.:			
Laurier to Danville, including Spur into Gr. Forks	227.51	$355.82	$80,951.53
Grand Forks to Granby Smelter	77.00	166.46	12,817.34
Phoenix Line	300.40	342.14	102,779.69
Midway to Molson	420.80	100.00	42,080.00
Chopaka to Keremeos	214.32	186.51	39,972.33
Cloverdale to Port Guichon	205.67	400.00	82,268.00
New Westminster to Vancouver	182.00	862.31	156,940.00
CROWS NEST SOUTHERN RY.:			
Gateway to Fernie	883.90	52.62	46,517.00
Fernie to Michel	341.00	162.40	55,377.65
NELSON & FT. SHEPPARD RY.:			
International Bdy. to Troup Jct	831.30	75.00	62,347.00
RED MOUNTAIN RY.:			
International Bdy. to Rossland	132.65	645.54	85,632.00
NEW WESTMINSTER SO. RY.			
Blaine to Brownsville	319.20	228.19	72,840.00
KASLO & SLOCAN RY.:			
Kaslo to Saudon and Cody	475.00	23.22	11,030.00
BEDLINGTON & NELSON RY.:			
Int. Bdy. to Kuskanook	363.69	70.00	25,467.00
Totals	4,974.44	176.31	877,019.54
TERMINALS.			
Vancouver	110.25	$20,786.39	$2,291,700.00
Total in Province	.....	.....	$3,168,719.54

RIGHT OF WAY AND STATION GROUNDS ON LINES UNDER CONSTRUCTION.

Location.	Acres.	Av. Value per Acre.	Amount.
MINNESOTA:			
Greenbush to Warroad	743.65	$ 31.21	$23,206.87
MONTANA:			
Judith Gap to Laurel	1,767.92	44.61	78,866.00
WASHINGTON:			
Wenatchee North Line	282.50	$ 111.34	$31,452.47
Waterville Line	338.56	36.48	12,352.14
	621.06	$ 70.53	$43,804.61
BRITISH COLUMBIA:			
VANCOUVER, VICTORIA & EASTERN RY. & NAV. CO.:			
Keremeos to Princeton	310.39	$ 67.99	$21,103.00
New Westminster to Olivers	102.11	342.26	34,948.18
Cloverdale to Sumas	506.00	84.82	42,918.50
Blaine to Olivers	159.30	86.69	13,809.19
	1,077.80	$ 104.64	$112,778.87
Totals	4,210.43	$ 61.43	$258,656.35
TERMINALS ON LINES UNDER CONSTRUCTION:			
Winnipeg	259.32	$ 4,563.61	$1,183,436.00
Tacoma	17.00	20,000.00	340,000.00
Total			$1,523,436.00
GREAT NORTHERN INTERESTS IN OTHER TERMINAL COMPANIES.			
St. Paul.....Minn. Transfer Ry. Co., G. N. Inst. 1/10			$575,619.00
St. Paul.....St. Paul Union Depot Co., G. N. Inst. 1/9			610,572.00
Superior.....Lake Superior Terminal & Transfer Ry. Co. of Wis., G. N. Inst. 1/3			116,725.00
Total			$1,302,916.00

Q. The first page of this exhibit, Mr. Hayden, as I understand it, contains a general summary of right of way, station grounds and terminals on lines in operation, of the Great Northern Railway system in the different states. That is a correct statement, is it, of the different states in which the system runs?

A. Yes, sir; including the Province of Manitoba and the Province of British Columbia in Canada.

Q. Certain lines that extend up into those provinces?

A. Yes, sir.

Q. And the mileage, 6760.66, how is that ascertained?

A. That is the mileage of the main track, and that mileage is obtained from the chief engineer's records.

Q. It is a matter of actual computation from the engineer's records, of the actual mileage of main track?

A. Yes, sir.

Q. The next column is a computation of cost of reproducing the right of way and station grounds outside of terminals. To what extent are terminals excluded from that column?

A. To the extent as shown on the second page. I think there are 17 larger cities or larger terminals which we have excluded from the ordinary right of way and station grounds —made a separate exhibit of those.

Q. With the exception of those 17 larger terminals, the terminal grounds in smaller towns and villages are included in the third column?

A. Yes, sir.

Q. Together with the so-called country right of way?

A. That is correct.

Q. The next column contains a summarized statement of the value, as you view it, of the cost of re-acquiring those 17 terminals?

A. Yes, sir.

A. And the final column is a totalization of those values shown in the preceding columns referred to?

A. That is correct.

Q. Turning on to the next page, you state you have shown there the 17 largest cities on the system.

A. The largest in the sense of being the largest terminals, that is, of the most value.

Q. They are the 17 cities at which the Great Northern terminals are of the most value?

A. Yes, sir.

Q. The acreage of those 17 is obtained how?

A. From our actual right of way maps in the office, showing the area.

Q. Those are actual quantities?

A. Yes, sir.

Q. I will come to your method of arriving at the figures a little bit later, but the figures you apply per acre have been applied to the actual quantities?

A. Yes, sir.

Q. And the total is shown in the last column?

A. That is correct.

Q. On the same sheet are certain terminals on lines under construction. Those are only two in number. They are certain terminals which you have in Winnipeg, and Tacoma, Washington?

A. That is correct.

Q. The next part of the same page contains the statement of the Great Northern interest in other terminal companies, namely, the Minnesota Transfer, the St. Paul Union Depot Company, the Lake Superior Terminal & Transfer Railway Company. Now, those three terminal companies are utilized as a part of the Great Northern system for the purpose of supplying the system with terminals at the places where these terminal companies operate?

A. Yes, sir. I will state that the figures given on this sheet for the terminals on lines under construction and the interest in the other terminal companies were not included in my total figures in this statement.

Q. They are not included in the total figures on page 1?

A. No, sir; that is correct.

Q. Turning now to the third page, will you state briefly what that recapitulation is meant to show?

A. On page 3 is a recapitulation of the right of way and station grounds on lines in operation, exclusive of terminals shown on preceding sheet No. 2, but including right of way and station grounds in 370 villages, towns and cities of over 200 inhabitants each; and then an itemization of the location in different states, the number of miles in each state, the average rate per mile for right of way and station grounds, the number of acres in each state, the average rate per acre, the total amount in each state, which corresponds with the same item on sheet No. 1 under "Right of Way and Station Grounds Outside of Terminals."

Q. The column entitled "Average rate per acre" in these

different states is figured including the acreage that is embraced within 370 villages, towns and cities that have over 200 inhabitants each?

A. Yes, sir.

Q. Below that table you have a table relating to lines under construction. What is that?

A. Those are lines on which we have not yet placed the iron, or begun to operate. They are lines under construction for which we have obtained right of way either in whole or in part, and these figures are also not included in the totals on the first sheet.

Q. Certain of the larger elements of value seem to be in the cities of St. Paul, Minneapolis, Spokane and Seattle, together with certain others. Will you state how you arrive at the figures relating to St. Paul and Minneapolis?

A. In St. Paul and Minneapolis we had three real estate men, the best men we could find in their profession in the two cities, who were selected by reason of their qualification as expert real estate men, who had large experience in buying and selling real estate, and we asked them to make an appraisal of our property as bare real estate without any improvements upon it, and based upon the values of adjacent property. These men were appointed in the fall of 1906 (September, I think it was) and we furnished them with maps and gave them instructions as to what we wanted, but not for the purpose for which we wanted it—just the instructions to make a valuation of our property as real estate.

Q. Was anything said to them as to whether the railroad was interested in a high or low valuation?

A. No, sir.

Q. Was anything said to them as to what the purpose of the valuation was?

A. No, sir.

Q. Mr. Thomas Cooper has testified somewhat along the same line. Was the appointment of this committee coincident with the appointment of the committee generally by the railroads here in St. Paul for the purpose of making up a return to the State of Minnesota?

A. Yes, sir; the men we selected in St. Paul and Minneapolis were the same men for the different railroads who were in that conference in the fall of 1906; and the purpose of that conference was to get together and see what was necessary to be done in order to comply with the requirements of the State as to the report that we would have to make to the State

Railroad and Warehouse Commission, and it was determined that it would be better to select a committee of real estate men in each city, St. Paul and Minneapolis, and let them make the appraisal of property for the different railroads, without saying to them what the purpose was, or anything more than just to make an appraisal on a real estate basis. I think the roads in this conference were the Northern Pacific, the Milwaukee & St. Paul, the Rock Island, the Omaha, and I think the Soo (I wouldn't be sure about that), but there were several of the larger companies interested at that time.

Q. What have you to say as to the character of the men and their standing in their profession as real estate men in St. Paul and Minneapolis?

Mr. Wimbish: I don't think that is a proper question, may it please the Court.

Mr. Holden: Why not?

Mr. Wimbish: I don't think this witness can testify to their character and standing.

Mr. Holden: If he knows the fact that they have a certain standing in the community I do not see why it is not proper for him to so state.

The Master: I will allow the question.

A. As I stated before, we selected men whom we considered were the very best men we could find in the city in their profession.

Q. Now, briefly, that committee met, and after some period of time had elapsed, returned to you what?

A. They returned to us our maps, with a statement showing what they considered the value of our property was per square foot in certain districts in each city. They had taken the maps and divided them up into districts, for instance between streets running along our main track, starting at the Union Depot with our property (the Great Northern property), they put on a certain value per square foot up to Broadway, and then another value per square foot from there on to the next subdivision, and so on through the city out to the western limits. And the same in Minneapolis. They did not give us a total valuation of our property or a valuation of any particular district, but simply what their judgment was as to the value per square foot within those districts.

Q. What did you then do with their figures?

A. We took the maps then and figured the area there was in the right of way and terminal grounds in those different districts, and applied the square foot values given by the real

estate men to those areas, which produced a valuation as real estate without improvements. In St. Paul and Minneapolis I added to the real estate men's figures, or values, as we found them, an additional 25 per cent., to cover what I considered was the railroad value—that is, what we would have to pay over and above what the land could be purchased for as a commercial proposition by a private corporation or an individual. That included the damage by severance in case any lots were partly taken, and also the damage sustained by reason of any buildings which we might have to remove, as we often find in buying right of way and terminals there are buildings and improvements which have to be destroyed, which add to the cost of the bare land; and that percentage was added after considerable careful thought was given to the matter, and I considered 25 per cent. conservative for that purpose.

Q. In making the addition of that percentage to what extent were you guided by your past experience in matters of this kind?

A. Well, almost wholly. Of course, we have never had as much right of way to get at any one time as that would involve, but, judging from our experience on similar tracts, I think 25 per cent. is very conservative.

Q. You said something about making the railroad value, or making a figure which would fairly represent, in your judgment, the railroad value. What do you mean by "railroad value"?

A. The difference between a railroad value and a commercial value is this: If a person starts out to buy real estate for commercial purposes or business purposes he has a choice of selection. If he cannot get the lot he wants he can buy a lot some place else in the immediate vicinity; but in a railroad right of way you have got to buy exactly what the engineer says he requires; you have to buy it whether it is at a reasonable price or an unreasonable price; and we find we have to pay more in the end in buying property that way than we would if we had our choice of sites.

Q. Then, as I understand you, the computation shown of the St. Paul and Minneapolis terminals is an application of the per square foot figures given you by this committee to the acres plus an addition of 25 per cent., to reach what in your judgment was necessary to show as the railroad value of the lands?

A. Yes, sir.

Q. The computations have been checked and are accurate, are they?

A. To the best of my knowledge and belief I think they are accurate.

Q. Will you speak regarding the terminal properties at Seattle?

A. At Seattle I had my western right of way agent, Mr. Snapp, who was stationed at Seattle, employ some real estate men there to help him make an appraisal of our terminals in that city. He selected ex-Governor Magraw, of the State of Washington, who was a resident of Seattle and in the real estate business there, furnished him with maps, and went over the ground with him, showing him the property, and then had him make an appraisal of what he considered the land was worth as real estate without improvements, just as we had done here in St. Paul. The appraisal in Seattle is made up partly on the judgment of Mr. Magraw and the judgment of our own western right of way agent and that of myself and our attorney, Mr. Gilman, who went over the matter very carefully for the Portland hearing in the Spokane rate case; and the figures I have in this estimate are exactly the same that we used at Portland, with the exception that in our terminal properties at Seattle we have since made a subdivision and segregation, giving the Northern Pacific a certain percentage of that terminal strip. In the Portland hearing we had it divided one-half interest each in certain parts of the property. In the segregation of the interests we found that we had a little more than one-half interest as to value in that same strip, and these figures were changed to that extent; otherwise they are the same as those which we used at Portland.

Q. Now, as to these smaller terminals, property located in other places, without taking too much time, what effort and care did you use toward getting those figures at those places?

A. Taking them in order, in the city of—

Q. No, it is not necessary to do that, unless counsel calls for it. I would like you to make a brief statement of that subject, so we can get along a little faster, perhaps.

A. I had real estate men and bankers and others at the smaller places give me their estimates of what town lots were worth adjacent to our station grounds, through the different parts of the towns, and then I applied those prices per lot to the area of our station grounds immediately opposite, dividing the station grounds and terminals into town lots and blocks of the same relative size, and got at the values in that way,

adding a percentage varying from 25 per cent. in the larger places to as high as 50 per cent., and sometimes as high as 75 per cent., in the smaller places, according to the condition at each place. My judgment is and my experience is that in the larger places we would not have to add as large a percentage for the railroad value as we do in the smaller places, because the property is more available for larger business sites in the larger places than it is in the smaller places, and the prices for commercial property are necessarily higher in the larger cities than in the smaller cites.

Q. You spoke about the Spokane hearing. That has been referred to a great many times in this case. You made up your figures for that hearing approximately two years ago and testified before the Interstate Commerce Commission at that time, did you not?

A. Yes, sir.

Q. And how long have you been engaged in considering this question of the fair cost of reproducing the lands of the Great Northern system and investigating by your own efforts and by securing opinions of other people on that general subject?

A. Since the year 1903, when we started to make an appraisal for the tax commission of the State of Wisconsin. That appraisal was confined to the State of Wisconsin. And then in 1906 we began making inquiry as to the values of our property, cost of reproduction on the entire system, first for the State of Minnesota and later for the Spokane rate case; and have been at it almost constantly ever since.

Q. Just what do you mean by being at it almost constantly ever since?

A. Well, it has been up in different forms, for state valuations or rate cases, ever since.

Q. If I may ask you a leading question (I guess there is no objection to it), have you been conducting a more or less continuous investigation into this subject ever since you made your beginning at it, and particularly since you were called upon by the State of Minnesota to make the report in 1906?

A. Yes, sir; I have.

Q. And with reference, perhaps, to the State of Minnesota, have you had occasion to go out on the line numerous times, to make investigations in your own behalf?

A. Yes; I have been out over the lines in Minnesota several times in the last six months.

Q. To what extent during your experience in connection with the right of way department have you been over the lines of the Great Northern system?

A. I have been over the entire system, practically every mile of it, and some of it a great many times; the main lines in going to and coming from Seattle and other points on the coast, and the branch lines in obtaining right of way, additional right of way, station grounds and things of that kind.

Q. Do you feel that you are personally familiar and acquainted with substantially all of the mileage where there are important terminals or elements of value in the lands?

A. Yes, sir. I have been over them on foot—a great many of them.

Q. On foot?

A. Yes, sir.

Q. Now, your figures as contained in this exhibit are, to some extent, different from the figures reported to the Minnesota Railroad Commission, are they not?

A. They are as to the State of Minnesota, yes, sir. I found in making up the first return to the State of Minnesota, which was done in more or less of a hurry, that quite a number of errors crept into the statement in the way of differences in acreage and in the carrying out of the extensions of the rates and the amounts; and in the summer of 1908 I obtained additional blanks from the state engineer to prepare a new statement correcting the errors in the first statements made. I made up such a statement, but I found in going over it with the additional information that I had obtained that it would not be a fair statement of our reproduction value, and I therefore prepared a new statement entirely for the Minnesota rate hearing. Before I did that I went out over the lines and personally investigated the values in a number of the cities and towns on the line. I sent out the different agents along the line and had them get the opinion of real estate men, bankers and others as to farm land values, and from the information thus obtained I made a new statement which reduced the valuation of the right of way, outside of the three terminals of St. Paul, Minneapolis and Duluth, about two and one-half million dollars, and those figures are the same as those which I have used in this statement. The terminals I did not change.

Mr. Teal: Do you remember the difference between the value fixed by the State of Minnesota Railroad and Warehouse Commission on the lands and terminals in Minnesota and your value?

The Witness: I only have it in lump; I have it here in the statement.

Mr. Teal: I did not want to interrupt the examination, but I thought perhaps you might have it.

The Witness: I can give it to you if you wish.

Mr. Teal: All right.

The Witness: In our statement to the State of Minnesota we had for right of way and terminals a total value in the state of $33,033,430, and the state's estimate on that same property is $16,656,247. Those are the totals. I haven't got the state's figures yet.

Q. Now, passing on to page 4 of your exhibit, that embraces the lands located in the State of Wisconsin, of which there is not a great deal. You have 520 and a fraction acres, at an average rate of $162. Do the figures shown on that page represent, in your judgment, the present value of those properties as railroad lands?

A. Yes, sir; what I estimated it would cost to reproduce them at this time.

Q. Now passing to the Minnesota figures, on the next page: you have shown the Minnesota lines in 46 different divisions. Those divisions coincide, do they not, wth the divisions of the Minnesota lines made by the Minnesota Railroad and Warehouse Commission?

A. Well, I don't know that they are made by the Commission. They were made, I think, by our engineering department, with the consent of the Commission.

Q. After conference?

A. After conference, yes.

Q. For convenience in handling, the line was divided up in this manner, into those divisions?

A. Yes.

Q. The acres shown there, I take it from what your testimony has already been, are actual acres from your right of way map?

A. Yes, sir.

Q. And the "average value per acre" includes the cities and towns and village which are embraced among those 370 referred to on page 3 of the exhibit?

A. Yes, sir.

Q. Now, will you state what, if any, multiple you have used in ascertaining the figure for the country right of way?

A. Outside of the towns and villages we have taken about three times the average value of farm lands; it does not run uniform, but that is about the average. It varies somewhat in some places. But the multiple of 3 was a figure which we used, after conference with the right of way agents of other railroads in order to fill out the State of Minnesota blanks.

They asked for two columns—one showing the market value and the other the right of way value. The market value we took to mean the value of the land in large tracts, as whole farms; and in the towns as full town lots; and the right of way value what it would cost us to obtain a certain number of acres of that same class of property. In the country right of way we have to pay more than the price per acre for the acreage we take, because there is a good deal of damage to the balance of the land by reason of severance of the farm into separate pieces, different pieces, and the damage to buildings, either by destroying them or our proximity to them, and the taking of other improvements, such as wells and fences, meadow pastures cut in two, and all that sort of thing; all has to be taken into account.

Q. Does the presence of a railroad running through a man's farm actually or in his own mind lead him to claim an element of damage on that account?

A. Yes, sir.

Q. Noise, danger to himself and his children and his stock, and all of those elements you have reference to, I take it, in using the term "severance damage"?

A. That is true.

Q. And is it or not a fact that in the Minnesota rate case the multiple of 3 was agreed to by the engineer of the Railroad and Warehouse Commission as a reasonable average for the purpose of ascertaining the difference between the farm value and the railroad value?

A. I think that is correct. Mr. Morgan has used about that same rate—I think in fact the multiple of 3—in his estimate.

Q. And from your knowledge and experience of railroad right of way matters generally, is that or not a conservative basis upon which to make such an estimate?

A. Well, I think it is in the case of Minnesota at this time. I do not think you can use any uniform multiple for getting at the right of way value as distinguished from the market or farm land value for right of way. The percentage varies very greatly in different parts of the state, in different parts of our line through the country. In new country, where we are building a line into a territory which is not supplied with railroads, where the settlement is very sparse and the people are anxious for a road, we do not have to pay three times; but where it is settled up, and they do not need the railroad very badly, and where their improvements are better and the

damage is greater, we have to pay more than that in a great many cases.

Q. What has been your experience in such districts in reference to paying more than that?

A. Well, we can hardly anticipate where it is going to cost us more or less except in the very new countries. We have had cases where we have had to pay as high as—well, from ten to fifty times the actual value of the land, for a right of way, and then at the end of a lawsuit, in places where we could not anticipate there would be anything more than just the actual land value, or perhaps one or two times as much as that.

Q. Have you any specific instances in mind? If I may direct your attention to one, I think you spoke to me of one down on the Hutchinson branch, where you had occasion to acquire some land from a land owner there, and afterwards resold some surplus portion of it back to him. Will you state the facts in that regard merely as an illustration of what you are now talking about?

A. I do not seem to have that particular instance there, but my recollection is it was the land of a man by the name of Schmidt, just west of Excelsior, on the old Hutchinson branch. We ran through his farm and went between his holding and the public road, and had to change the highway in one or two places to get around. That land was worth, I should say, about $100 an acre, on account of its vicinity to the town of Excelsior. We paid Mr. Schmidt, at the end of a lawsuit, a fraction over a thousand dollars per acre for the right-of-way. Later, the line was changed at that place and put on the north side of Lake Minnetonka and that part of the line west of Excelsior was abandoned. We sold back to Mr. Schmidt the same land, if I remember, for something like a hundred dollars.

Q. Per acre?

A. No, the whole thing. It was about three acres. That is one of many instances in that same vicinity, on that same line. We paid all the way from $200 to $400 or $500 an acre for quite a number of tracts in through Hennepin and Carver counties, and later, when the line was changed, we sold back those same pieces at practically $10 to $20 an acre.

Q. Generally speaking, does that state of facts to a greater or less degree exist all over the system, and have you had such experiences throughout the system?

A. Yes, we do have experience almost in every locality

where we get right-of-way. We get some of it at a reasonable price, and others of it at a very unreasonable price.

Q. And these figures relating to the lines in the state of Minnesota, passing now on to page 6, embrace all of the lands including the large terminals, a total sum of $30,635,921?

A. That is correct.

Q. On page 7 you have a somewhat similar condition of the lines in the state of North Dakota. To what extent, Mr. Hayden, have you exercised care in ascertaining these values and showing the results in the last column on the page?

A. Well, this was arrived at in about the same manner as Minnesota, by writing to our different station agents and having them interview real estate men at their various stations along the line, to get the average value of the farm lands in their vicinity, and also the value of town lots adjacent to our right-of-way, without improvements, and by personal examination and by the knowledge which I have myself of the values by reason of having acquired either personally or directing purchases of right-of-way on the different branches and on the main line through the state.

Q. What multiple, approximately, did you use in that state?

A. Outside of the cities, I think we used about three times —in North Dakota.

Q. And is the same true of the next sheet relating to South Dakota, as to the method you used in getting these figures?

A. Yes, sir.

Q. And also in the state of Iowa, on page 9?

A. Yes, sir; that is correct.

Q. Is it also true of the lines in the state of Minnesota?

A. Yes, sir, that is correct also, outside of the terminals.

Q. Now, you have shown a figure of $1,000,000 in the city of Butte for 72 acres. Will you state how that figure was arrived at and what in your opinion as to its being a fair figure?

A. The city of Butte was a little hard to value, for the reason that Butte is a peculiar city in the fact that it is a mining town, said to be the largest mining-camp in the world, and the property is very valuable; and while we only had surface rights on a great deal of that property, it was in such position that it could hardly be reproduced at any price today, if we had to go and buy it now, by reason of the interference with their mining operations, and in regard to the city of Butte it is more of a guess than an actual estimate, because it can hardly be estimated. $1,000,000 is what I considered we would have to pay if we had to go and reproduce our property, our terminals and all in the city of Butte, and the line leading

from the top of the mountain, at the tunnel, down through the different mining claims to the depot on the main street.

Q. You gave the situation there your own special individual consideration, did you?

A. Yes, sir. I have been to Butte a great many times. I have spent considerable time in Butte at various times, and am very familiar with the conditions there and the values and the prices demanded for right-of-way.

Q. Did you take advice and have consultation with others there for the purpose of ascertaining the prices that were being paid, and matters of that sort, there?

A. Yes, I did, with several of the real estate men at that place.

Q. The state of Idaho; your testimony already given, I take it, applies to the acreage in that state. It is a very small amount.

A. Yes, sir.

Q. And in the state of Washington, outside of the terminals, would it also be true as to that acreage?

A. Yes, sir.

Q. You have already referred to the figure relating to the Seattle terminals. What was done to ascertain the figure relating to Spokane? You have 315 and a fraction acres in that city, and the total figure is $3,750,000.

A. In regard to Spokane, the acreage is the same as it was in the Portland hearing. The amount which I have given here, $3,750,000, is higher than it was in the estimate for the Portland hearing. For the Portland hearing we had the right-of-way valued by Fred G. Grinnell, of Spokane, and it was done in rather a hurried manner because of the scarcity of time to prepare for the Portland hearing. The figures were obtained from him and from others at Spokane. We put in a valuation of about 2-1/2 million dollars for our right-of-way and terminals in Spokane city, including Hillyard. Since that time we have had a careful appraisal made by a prominent real estate man, Mr. Walker L. Bean, in detail. His figure amounted to 3-1/2 million dollars. I have added $250,000 to his figures for the right-of-way value. His figures are the real estate value.

Q. The city of Everett shows a figure of $1,500,000.

A. Yes, sir.

Q. State briefly how you arrived at that.

A. The city of Everett was appraised by two real estate men, employed by us at Everett, who placed the valuation at a million and a half dollars, and also by Mr. John T. Mc-

Chesney, who is the owner of the townsite at Everett, and who has had more to do with the buying and selling of real estate there than any other one man, and my own judgment as to right-of-way values and real estate values from a great many visits to the town and a good deal of time spent there, and the consensus of opinion is that $1,500,000 is a very fair, conservative figure for the value of our property in that city.

Q. Your lines in Manitoba, Canada, are shown on page 13. Did you arrive at the average value per acre there in substantially the way that you have already shown in your testimony?

A. The lines in Manitoba represent the actual cost of the lines, which were obtained three or four years ago, with a very slight percentage added for increase in value up to the present time. The multiple of 3 was not used in that case.

Q. It was not used?

A. No, sir.

Q. Those figures are substantially the actual cost?

A. Yes, sir.

Q. And the next page, numbered 14, entitled "British Columbia lines." Those embrace a number of different lines. State briefly how the average value per acre of those was arrived at.

A. In the older lines, the lines which had been built for some years, we had to arrive at the value there the same as we have in the States, by taking the value of adjacent land and multiplying by 3 for the country right-of-way. Practically all of the items in which cents are shown are actual cost of the right-of-way—nothing added to it. Those lines were acquired within the last two or three years, and I do not estimate they would cost any more today than they did at that time.

Q. On page 15 you show tabulation of acres and average value per acre of lines under construction in various states. Are those figures largely actual cost figures?

A. Yes, sir.

Q. At the end of the exhibit you have a map attached, which shows in red color the lines of the Great Northern system from the head of Lake Superior to Puget Sound; does it not?

A. Yes, sir.

Q. And the legend on the map shows the mileage in the different states. Is that an accurate showing of the mileage?

A. That is an accurate showing of the mileage as obtained from the chief engineer. This map was prepared under his direction and the mileage was furnished by him.

Q. Now, Mr. Hayden, taking this exhibit and your testimony as you have heretofore given it, will you state whether or not in your judgment the contents of this exhibit represent a fair showing of what it would cost to re-acquire or reproduce the station grounds, rights-of-way and terminals of the Great Northern Railway system?

A. It does.

Q. And that is what you were asked to prepare and furnish for this case?

A. Yes, sir, the cost to reproduce the right-of-way and terminals as of June 30, 1908.

Q. As of that date?

A. Yes, sir.

Mr. Holden: We offer in evidence this exhibit, marked Complainants' Exhibit 11 (Hayden).

Mr. Teal: It is understood the same objection is entered.

The Master: It will be received subject to the same objection.

Cross-Examination by Mr. Walter.

Q. When did you first begin the tabulation of values of right-of-way and terminals, Mr. Hayden?

A. For this case, you mean?

Q. No; of the property of the Great Northern.

A. I first began to make a system valuation in the fall of 1906.

Q. You do not want to say that the property you have been speaking about all belongs to the Great Northern Railway Company?

A. Well, either the title belong to it or the interest is owned by the Great Northern in the ownership of stock.

Q. But are not a good many of these station grounds and rights-of-way owned by railroad companies which operate in their own name?

Mr. Holden: Just excuse me, Mr. Walter. Prior to last year that was true to a more or less extent; but, as the last annual report of the Great Northern Company shows, the title of the various subsidiary companies have all been practically merged into the Great Northern Company.

Mr. Walter: They still make separate reports, do they not?

Mr. Holden: They do not—and that is just where the Spokane decision, among forty or fifty other items, is wrong on the facts. The last anuual report of the Great Northern, as of June 30, 1908, clearly shows just what I say.

Mr. Walter: Are they leased?

Mr. Holden: No; there has been absolute conveyance made by all, or practically all, of these subsidiary companies, and they are all owned and held (with insignificant exceptions) by the Great Northern Railway Company.

Q. I notice in this statement several instances where you give the names of corporations, for instance, the Vancouver, Victoria & Eastern Railway & Navigation Company. That is separately operated, isn't it?

A. The V. V. & E. is operated by the—I can't answer that question. In British Columbia we have to have a different organization from what we have on this side of the line.

Q. That is, all railroad lines north of the boundary?

A. Yes, sir.

Q. They are all separate corporations?

A. Yes, sir, and have to be. The line from Vancouver to Westminister is operated, as I understand it, by the Great Northern; we run our own trains—through trains, and have our own conductors and our own brakemen.

Q. It is, however, a separate corporation that operates those lines in Canada?

A. It is a separate organization.

Q. Now, Mr. Hayden, are you at the present time tax commissioner?

A. No, sir.

Q. Were you at the time these tables were prepared?

A. In 1906 I was the right-of-way and tax commissioner, yes, sir.

Q. When these three men were selected, or the various men were selected all along your line, you did not tell them that the purpose of this valuation was for taxation, did you?

A. No, sir, I didn't tell them what the purpose was.

Q. I believe you say that in about 1906 there was a meeting of the various representatives of the railroads here in St. Paul and Minneapolis?

A. Yes, sir, that is true.

Q. And at that time you were present?

A. Yes, sir.

Q. And you canvassed the situation?

A. We did.

Q. And suggestions were made by the various representatives of the railroads?

A. As to how we would go about to make the valuation, yes, sir.

Q. And in adopting that plan it was not at all understood that the purpose of the valuation was for taxation?

A. No; the purpose at that time was to make the report to the Railroad and Warehouse Commission of Minnesota. They furnished us blanks for that purpose.

Q. Had the Railroad and Warehouse Commission advised you of the purpose for which they desired the facts as to valuation?

A. Not to my knowledge. We were to make what we considered a fair appraisal of our property.

Q. Now, that appraisal was made, and was more than 200 percent of the valuation fixed by the state authorities?

A. The state authorities at that time made no valuation.

Q. Well, but they have lately fixed—

A. They only tell us what they have done in a general way with the Great Northern property; I cannot say as to any other.

Q. I am speaking now of the Great Northern. Of the Great Northern property your valuation was 200 per cent greater than the valuation fixed by the state authorities?

A. You mean about 100 per cent greater?

Q. Yes; I mean your valuation is twice that of theirs?

A. Theirs is half of ours, I will say, in other words.

Q. All right. Now, Mr. Hayden, who were the men selected by the carriers to make the investigation of the value of the St. Paul and Minneapolis property?

A. In St. Paul it was Oscar L. Taylor, Mr. John J. Watson, and Mr. William C. Reed.

Q. At that time or previous thereto had any of these three gentlemen occupied any position with any of the carriers engaged in having their property valued?

A. I can only say as to the Great Northern. Of course the others I could not say anything about. The only man who had had any connection whatever with the Great Northern might have been Mr. Taylor; he purchased for us some property right near the union depot.

Q. He was, in a sense, your purchasing real estate man?

A. No, he was not. He was simply an outside agent whom we got to purchase some property which we could not do openly.

Q. Well, whenever you wanted to reach property for the railroad, you got Mr. Taylor to do it for you?

A. No, not always; he just happened to be the man in that particular case and in one or two others.

Q. You used him for that purpose? He was friendly to your interests?

A. Not any more so than any other real estate man would be.

Q. It was a matter of public knowledge that this report was to go to the Railroad and Warehouse Commission, wasn't it?

A. I think so. It was published in the papers that such a report was to be made.

Q. And there is no doubt in the world that the real estate men who made the valuation knew that it was to go to the Railroad and Warehouse Commission?

A. If you mean to infer that they made their valuation on that basis, I say no.

Q. No, I am not asking you that; but they knew that the value they placed was to go to the Railroad and Warehouse Commissions?

A. Well, as a matter of fact we told them we wanted to make a valuation of our property for the purpose of making a return to the state.

Q. Yes; and they did know the purpose for which they were to make the valuation?

A. Not as to what use was to be made of it, no.

Q. No, but they knew the purpose for which this valuation was being made—to be transmitted to the State Railroad and Warehouse Commission?

A. Yes, we told them what we were going to do with it.

Q. Now, a great deal of your property in St. Paul and Minneapolis is platted, isn't it, in streets and alleys?

A. It was when we got it, yes.

Q. And has a good deal of that been closed up?

A. Very considerable of it, yes, sir.

Q. And are those streets included in the acreage which you give in the statement here?

A. They are, yes, sir.

Q. Did you pay anything for the closing of the streets?

A. Not for the closing, but we paid, in a great many cases, for the abutting damages to the streets; and by the purchase of the abutting property we acquired the fee in the streets which, when the vacation was made, inured to our benefit.

Q. And that street area which, if it had any claim at all was indirectly, is embraced in the acreage here at the value which surrounding property takes?

A. Yes, that is correct.

Q. At the time this valuation per square foot was made, had the streets been vacated to the same extent as now?

A. Yes, that is true.

Q. There has been no additional vacation since that time?

A. No, I think not, neither in St. Paul nor in Minneapolis, nor in fact any of the places.

Q. These three gentlemen placed on the property a valuation per square foot?

A. Per square foot, in different areas, in different cities.

Q. Do you remember the minimum and maximum of those rates?

A. Yes; in St. Paul it ran down as low as either ten cents or 12-1/2 cents, up to $8.

Q. $8 was the highest?

A. That was the highest; that was right down by the depot.

Q. How long were these three gentlemen engaged in this work?

A. It is only a matter of recollection, but I should think two or three weeks before we got their reports.

Q. In St. Paul you have 354 acres. How many different parcels go to make up that acreage?

A. Do you mean original parcels, lots and blocks and acreage property?

Q. Yes.

A. I could not even approximate it.

Q. Well, about.

A. There must be at least several thousand.

Q. And the same is true of Minneapolis?

A. Yes.

Q. The values must, of course, vary very greatly even in parts very close together.

A. That is true.

Q. During the time these men were engaged, did your office give them any assistance?

A. No, we gave them no assistance at all. The only assistance we did give them was to give them a map showing our property through the city.

Q. Did you talk with them during that time?

A. No, sir.

Q. Did any of your office force?

A. No, sir.

Q. And during the three weeks they were engaged they valued all the railroad properties of the parties mentioned in this hearing?

A. Yes, sir.

Mr. Holden: You mean in the city of St. Paul?

The Witness: Yes, sir.

Mr. Walter: And in Minneapolis.

Mr. Holden: No, there was a different committee in Minneapolis.

Q. Who were the men in Minneapolis?

A. The men in Minneapolis were Mr. Barney, Mr. Elwood, and Mr. Ridgway.

Q. Did any of them have any relation to the Great Northern Railway Company?

A. None with our city property, no, sir.

Q. Had they handled any of your real estate?

A. No. The only man who did anything for us on right-of way matters was Mr. Elwood, who made a purchase for us, from a Minneapolis man, of property at Ellendale, North Dakota; but that was because he was acquainted with the man, and not because he was connected with the company.

Q. Do you know whether these men were also related in a business way with the other railroads represented at the hearing?

A. No, I could not say as to that; not to my knowledge, at least.

Q. How many different railroad companies were represented at that hearing?

A. I think I stated in the first of my testimony this afternoon the names of those I can remember; there may have been others.

Q. What was the acreage held by these roads at Minneapolis and also at St. Paul—the total acreage?

A. You mean the total?

Q. Yes.

A. I have no idea.

Q. It would foot up into the thousands, wouldn't it?

A. Yes; our own foots up, in the two cities, to nearly 800 acres.

Q. And the acreage of the various carriers, would make something in the neighborhood of 6 to 10 thousand?

A. I couldn't say as to that, because I don't know what the holdings of the other railroads are. I don't know as to that.

Mr. Holden: Not anything like that.

Q. It is composed of small parcels, distributed all over the two cities?

A. That is true.

Q. And approach very near together in places?

A. In some places they are very near together, and in some places they diverge.

Q. Now, at these two places you added 25 per cent to the values obtained by multiplying the total possessions by the value per square foot which they placed upon them?

A. That is correct.

Mr. Teal: That is true at all terminals, isn't it?

The Witness: At some of the other terminals we added different percentages—not always 25 per cent. 25 was what we used at St. Paul and Minneapolis.

Q. Is there any point where you added less than 25 per cent?

A. I think in the case of Spokane. There we had 3,500,000; we added 250,000.

Q. What was the greatest amount added at any of these places?

A. In these terminals, you mean?

Q. Yes.

A. I think perhaps in the case at Duluth. Some of those terminals were on Rice's Point. The real estate men fixed the value for the adjacent real estate at $3,000, and I put it at $9,000—that is just three times—for the reason that we had paid even more than $9,000 per acre for small tracts of that same strip.

Q. Mr. Hayden, isn't there some land here owned by the Great Northern, in these two cities, that is not at present in use?

A. If you mean isn't every foot covered by tracks, I will say there is some; but it is all in the yard, either now covered with tracks or for use in the immediate future for the extension of our yards. We have no property in St. Paul which we are holding for speculative purposes or anything of that kind.

Q. Do you have warehouses and industries located on your property in these cities?

A. We have a few.

Q. Do they pay rental?

A. Very few of them; only just along on the track, doing business over our line, but they are really on the right-of-way, they would not be called separate tracts of land.

Q. Well, they are occupied for industrial purposes?

A. They are there because they take carload shipments, and have sort of a warehouse for their use.

Q. Yes; very valuable to shippers.

A. I should think so.

Q. And they pay good rental?

A. They pay only a nominal rental. It is just an arrangement for getting business; it is more of a traffic matter.

Q. In nearly all of your terminals, with the exception of St. Paul and Minneapolis, you have a good deal of acreage property not used for railroad purposes at the present time?

A. Well, we have some; I would not say a good deal, except at Seattle, where we have quite an area which is not covered as yet with tracks.

Q. That at Seattle is valued at $64,000 an acre?

A. That is the average value. It varies, of course, in different parts of the city; a good deal more than that in some places and less in others.

Q. You have a total valuation there of $24,000,000?

A. Yes, sir.

Q. What portion of that 375 acres is devoted exclusively to railroad use?

A. I have not tried to make a segregation of that, but I should say that at least three-quarters of it was actually used today.

Q. You rent property there to industrial interests, I suppose, the same as you do here?

A. Very little. We have some warehouses along on Jackson street, right near the Union Depot, which we lease. The buildings belong to the company and we lease them to tenants for—

Q. Now, that valuation in Seattle, I believe you said, was made by an ex-governor?

A. Ex-Governor McGraw.

Q. Is he a real estate man for your company?

A. Not for our company, no, sir. He has never done any work for us, to my knowledge.

Q. Has he any relation or employment with your company?

A. No, sir.

Q. Was that his valuation—$64,000?

A. As I say, he did not make the valuation. He simply gave us his ideas of area of values, square foot values, in different parts of the city, and from his value, and from my own western representative, Mr. Snapp—from his konwledge of the actual conditions there, and also of Mr. Gilman, who is our attorney, and is familiar with right-of-way and also real estate values, and my own judgment, from being there a great many times and knowing the property, and having had to do with the acquiring of a good deal of it, it is the consensus

of opinion that this $24,000,000 is what our property would actually cost us if we tried to reproduce it at this time.

Q. Why did you add $80,110 to the $24,000,000? What does that $80,110 represent?

A. I don't understand that.

Q. You have here $24,080,110. How did you get that exact amount?

A. By taking up the areas in different districts and applying the square foot value.

Q. Didn't you take the total value of all of your holdings and apportion it to acreage in that way?

A. No, sir.

Q. And didn't you thus arrive at the total value of the Seattle property as $24,000,000?

A. We had to make that from the ground up.

Q. Did anybody submit at the meeting when you fixed the value any amount higher than $24,000,000?

A. As I say, nobody fixed any valuation. We took the area values as we found them and Mr. McGraw found them and worked up from that on the different areas and the different districts of the city. This estimate of $64,144 per acre is the average of the entire city. It varies very greatly in different parts of the city. Down around the Union Depot there and on the tide flats, immediately south of the city, that property is very valuable, and the price per acre would be greatly in excess of $64,000.

Q. The valuation you have at Seattle is as much on one acre as the combined value of St. Paul and Minneapolis—and more—isn't it?

A. Just about.

Q. And more. Are there streets laid off on your property?

A. I do not think there are any open streets through the tide flats except—well, there are a few streets through there, but not very many. We are free from streets.

Q. Those streets cost you nothing?

A. No.

Q. Now, what did you pay for your Seattle property?

A. Well, that would be pretty hard to say offhand; I haven't got it here.

Q. You didn't pay anywhere in the neighborhood of $24,000,000 did you?

A. We got property there in the early days when it was tide land property. We got it at the first appraisal made by the state of Washington as tide lands.

Q. It cost you scarcely anything?
A. It cost us considerable.
Q. How much?
A. I couldn't say.
Q. Can you give an estimate?
A. No, I could not, because I have not worked it up.
Q. How long ago did you start to acquire those?
A. We started in there in 1892 or 1893 to buy property.
Q. Now, it is true, is it not, Mr. Hayden, that a great deal of your right-of-way is across public lands, either state or national, for which you paid nothing?
A. That is true. In the building of our line, which was in the early days, we acquired a considerable right-of-way by acts of Congress and by reservations from our land grant and by charter from the state of Minnesota; that is true.
Q. And all of that land, which cost you nothing, you have appraised at the full value as though you had paid cash for it?
A. Not as though we had paid cash. I am making this estimate as of the cost of reproduction as of this date; and I assume in the case of the grant from the government that the land is now all taken up by homesteaders and has passed to other parties, and if we tried to buy it today for our right-of-way we would have to pay the same for it as any other land.
Q. Did you have any land grants exclusive of right-of-way?
A. We had a land grant from the state of Minnesota.
Q. Of how much?
A. I could not say as to that, because my work has not been with the land department.
Q. Well, about how much? You have heard, I suppose.
A. I should think about 3,000,000 acres, perhaps.
Q. Those 3,000,000 acres, received from the state, were free?
A. They were to aid in the construction of the railroad—free to that extent.
Q. And it was contributed by the state for the building of your road?
A. Contributed by the state, yes, sir.
Q. And from those lands you have received a value greater than the entire value of your railroad, haven't you?
A. I could not say as to that. That is a matter of record, though; that can be ascertained.
Q. But it is true that they have been exceedingly valuable—hundreds of millions of odllars?

A. I don't know as to the amount, but they have been valuable, because that was the purpose for which they were given to us—to sell and pay us for the cost of building into a new territory, which did not supply us with traffic at the time.

Q. The public, represented by the authorities, gave the land to the road for the purpose of aiding in its building?

A. To aid in the construction of the road, yes, sir.

Q. Now, under those circumstances do you not think it is quite proper that the railroad company should not put any extravagant value on its land or any theoretical value?

Mr. Holden: Just a minute. I submit that the witness ought not to be asked such a question as that, because he has not been called on any such theory.

Mr. Walter: I will withdraw the question; I have no desire to press it.

Q. That land grant included the ore lands, didn't it?

A. No, that did not include the ore lands.

Mr. Donnelly: No. That is where you get your hundreds of millions.

Q. Where did the land lie?

A. It lay in the Red River Valley principally.

Mr. Holden: Do you mean now the ore land or the land which was granted?

The Witness: The land which was granted. It was principally in the neighborhood of our line that runs from St. Cloud, through Barnesville, up through Crookston and to St. Vincent, and from the cities of Minneapolis and St. Paul through by Willmar and Benson out to Breckenridge.

Q. You think the ore lands were not in any grants of the state and federal government?

A. Not to my knowledge, no, sir.

Q. Now, you spoke of the valuation placed on the lands at Everett. I think you said that the owner of the townsite at Everett joined with you in the appraisal of that property?

A. That is correct.

Q. He is very much interested in having the property valued at Everett?

A. He is not interested so much, but the fact is that he has a knowledge of what the value is, from sales and from what he has been acquiring and selling property for.

Q. He is engaged in the business of disposing of land at Everett?

A. Yes, sir.

Q. Minnesota, I believe, has a system of taxation based on gross receipts and not upon real property; is that true?

A. That is true.

Q. The rest of the states through which you run have taxation based on value?

A. The value of the property per mile, mostly.

Q. Have you any record as to the valuation you have fixed upon that property for taxation purposes?

A. The records are in the office, yes; the states have fixed the value per mile.

Q. How does that compare with the valuation you have fixed in this table?

A. It is not as high.

Q. Not as high by a good deal?

A. I should say by considerable. How much I have not determined.

Q. Is it your opinion, as a man who values land, that land should have one value for taxation and another for rate-making purposes?

Mr. Holden: It seems to me that is a highly improper basis because we all know—perhaps Mr. Walter may be an exception, but we all know that we all have value of one kind when we come to talk to the tax commissioner and another when we come to sell; and there is nothing more notorious than that all taxable values are based upon a percentage of the true value—in some states it is 25 per cent., in some 50, and in some 60; and it seems to me that whole subject has no bearing whatever upon a proposition of this kind, and this witness was only asked to express his judgment, from his experience, as to what it would cost to acquire these lands.

Mr. Dillard: Those values are recognized by tax boards and in Chicago the recognized value is only about 30 per cent., isn't it?

Mr. Holden: That is it.

Mr. Walter: If the state tax is only 50 per cent. of the real value, I intended to inquire as to whether 50 per cent. is the same as the taxable valuation.

Mr. Holden: This gentleman is not the tax commissioner.

Mr. Walter: He says he knows about it.

Mr. Holden: I haven't any objection to it, but it seems to me it goes into a collateral issue which does not throw any light on this proposition, that is all.

Mr. Walter: If he can answer, I would like to have him do so; if he can't, I will let it go.

Mr. Holden: Let me see if I understand the question, first.

The following question was read: "Is it your opinion, as a man who values land, that land should have one value for taxation and another for rate-making purposes?"

The Master: I don't see how that question could be very material. His opinion on that proposition would be merely speculative, anyway.

Mr. Holden: That is exactly what I think, as indicated in my objection.

Q. If land is taxed at its full value, I will ask you whether that value would be a proper value for the reproduction of the property?

A. Well, I have doubt about that, for this reason. We first made up our estimate of valuation and estimate of reproduction in the state of Wisconsin. The state also had an appraisal made at the same time. This was for the purpose of taxation. We were asked to make an appraisal of our property for the state, and then they were going to check it up and make a valuation of their own. We had a conference at that time at Chicago with the various roads. We determined to make a fair value, just as we have in this cost of reproduction in Minnesota and the system here, and we put in an estimate there of about 3-1/2 million dollars for our property in the state of Wisconsin, and the state's figures were very close to that. Now, when they came to assess that property for taxation, the state's figures, in 1908, were in the neighborhood of $4,800,000, and the present value, that is, the value of buildings and tracks, including the right-of-way and terminals between 3-1/2 and 4 million dollars. The valuation for taxation purposes today in Wisconsin, is $8,200,000.

Q. Now, Mr. Hayden, in making the various estimates of value of your property, did you have recourse to what you paid for it?

A. No, I paid no attention to that, except to purchases made in very recent years.

Q. Does your office contain records which show the original cost of the right-of-way and the terminals?

A. They do not in every case. The records for the older lines were not kept that way, and a great many lines we ac-

quired by purchase from other roads, and those records we never did have.

Q. The purchase price paid by your company is a matter of record?

A. That would be for the entire road, though.

Q. That would include everything?

A. That would include the rails, ties, buildings, equipment and everything.

Q. Equipment and all?

A. Yes, sir.

Q. Your records contain that data?

A. I presume the records of the accounting department do; our right-of-way records do not.

Q. How far back do your right-of-way records give the cost or that which you have paid for land for railroad purposes?

A. In some cases they run back I should think, in a general way, to about 1882 or 1883.

Q. So that for purchases since that time it would not be an impossible matter to determine the original cost?

A. I will tell you, the right-of-way records show only the consideration in the deeds, that is, the price paid for the land alone. They do not show the charges for expenses of right-of-way agents and others in obtaining the land, or the recording fees or the abstracter's fees, and a good many other details that go into the cost. Our right-of-way books do not show that. They simply show the date and the consideration paid.

Q. In making your figures you have not taken into consideration the cost of buying the land and the abstract fees and matters of that sort? You have simply gone out to get the value of the property at the time?

A. As I take it, the estimate which I have made is what, in my judgment, it would cost us to go and get it of this date, if we had to go and reproduce it today. This estimate is made as of June 30, 1908, and as of that date that is my judgment as to what it would cost us to reproduce it—to go out and buy it now, at this time.

Q. It includes, then, every possible expense to which your company would be put?

A. Yes, sir.

Q. And includes matters of clerks' fees, notary fees, abstract fees, attorney fees, and everything of that sort?

A. Everything, yes, sir.

Q. You are quite sure that you have not under-estimated the value of that property?

A. I think it is conservative. I do not think it is over-estimated or under-estimated. I think it is as conservative as I can make it.

Q. You are well aware of the fact, Mr. Hayden, that it is an easy matter for real estate men to differ widely on the value of the same piece of property?

A. They do.

Q. And value such as you give in your table is largely a matter of judgment and opinion?

A. And experience in the case of a railway.

Q. A man's judgment is always determined by his experience, isn't it?

A. It should be.

Q. And men of the same experience may differ very widely in the value of property?

A. That is true.

Q. And the statement which you have given here simply embodies the opinion of yourself and men who are engaged in the purchase of right-of-way for your company, together with such men as they have called in to assist them?

A. That is, the assistance of men who are familiar with land values outside of any right-of-way values and who are not engaged in right-of-way business.

Q. It is not based on the cost of the land at all?

A. Not at all, no, sir.

By Mr. Teal:

Q. You are reasonably familiar with the situation in Seattle, are you not?

A. Yes, sir.

Q. With its commercial importance, and also, I was going to say, its population, but I don't know whether you will want to admit that or not.

A. I don't know as to population.

Q. I won't hold you down as to the population, but you are familiar with its commerce and importance?

A. Yes, I am reasonably familiar.

Q. Now, in your judgment as to business and commercial importance, how do the cities of St. Paul and Minneapolis compare with Seattle?

A. It is pretty hard to compare them, Mr. Teal. The conditions are altogether different. Seattle is really a seaport

and there is a great deal of trans-shipping done at that place and it has an enormous traffic passing through it, and the population is increasing in very rapid strides, and the valuation of the city is increasing, in nearly all parts of it, very rapidly—much more so than here at St. Paul or Minneapolis. So you can hardly compare them.

Q. I notice that here in St. Paul and Minneapolis together you have a terminal acreage of 755.

A. Yes, sir.

Q. That is reasonably well located in both of these cities, is it not?

A. Yes, sir.

Q. And in Seattle there are 375 acres plus?

A. Yes, sir.

Q. And the valuation of the 375 acres in Seattle is about $2,000,000 more than the 755 acres in Minneapolis and St. Paul together?

A. Yes, sir, and I think it would cost us that if we had to buy it today.

Q. You think that is right?

A. I think that is right.

Q. Now, as to the Seattle terminals, you have all the records there as to cost, have you not?

A. I think we have everything there, yes, sir.

Q. I would like to ask you to file as part of your testimony the actual cost to the Great Northern of securing the terminal properties covered by this statement, without regard to the structures that are upon them.

A. Just the bare land?

Q. Yes, just the bare land, so that it will be just the same as this. In Spokane there are in round numbers 315 acres.

A. That is correct.

Q. You were with the company when they built to Spokane, were you?

A. I was, yes, sir.

Q. You are familiar with how the right-of-way was acquired in Spokane?

A. Yes, sir.

Q. Covered by these terminal facilities or most of them.

A. Yes, sir.

Q. How was that acquired?

A. It was acquired partly by purchase and partly by donation of a 60-foot strip by certain citizens of the city.

Q. Clear through the city?

A. It wasn't clear through, Mr. Teal. It started at the northern or eastern boundary of the city and ran consecutively and continuously down to Broadway, at the O. R. & N. crossing, and then there was a break through Bradley and Dennison's addition, and then it started and ran across the river through what we call the Dillman tract, a 60-foot strip, what is known as the Citizens' strip, and then it crossed over the end of Havermale Island and ran up along the north side of the river to about Chambers addition, up near Boone Avenue. But that strip was not donated outright; that is, we paid for parts of it and the citizens paid for a part of it. It was not an actual free donation.

Q. A very considerable part of it, though, was paid for by voluntary subscriptions of the citizens?

A. Yes, sir, part of it; not as a city but as private individuals.

Q. I understand—as private individuals. Could you state, even approximately, how much of this 315 acres, or, rather, how much of that valuation of $3,750,000 was represented by that donation?

A. (After figuring). I estimated roughly, just a day or two ago, that the strip donated party or in whole amounted to 3.2 miles of the 60-foot width, and took in about 12-1/2 acres. I think that is a conservative valuation of that strip. The part that was donated would be about half a million dollars. Of course that is only a round-figure estimate; I have not gone into details.

Q. The city also vacated a number of streets for you, didn't they?

A. They vacated some streets, yes, sir.

Q. And that also appears in here?

A. That appears in the acreage, yes, sir; I took the acreage straight through.

Q. So, when you gave the illustration of your hard luck, you do have good luck sometimes, in getting a donation?

A. Yes, sir.

Q. A donation of that kind would cover a good many acres at $3,000 per acre?

A. Yes, it would cover several of them.

Q. It would make a fair average?

A. I don't think it would average up the total acres, because we have six or seven hundred miles against three.

Q. Now, Spokane was not the only city among these terminals that helped you out on rights-of-way and terminal facilities, was it?

A. I don't know of any other donations. We got very few donations for terminal grounds anywhere, and this strip in Spokane was just a narrow 60-foot strip; we had to purchase our terminals outside of that.

Q. It went right through the city, though, didn't it, except for that break?

A. It went through a considerable part of it, yes.

Q. Spokane was pretty poor then, wasn't it?

A. I guess they weren't very flush at that time—those were hard times, but they wanted a railroad pretty badly in order to make them flush.

Q. On page 15 there is a statement headed "Right-of-way and station grounds on lines under construction," and there is a column entitled "Acres," and another one entitled "Average value per acre." Do the values that you have out to the right there represent the actual purchase of land?

A. They do in a great many cases; they do on the line from Greenbush to Warroad.

Q. You actually paid there $31.21 an acre?

A. We actually paid $23,000 for the amount we obtained there; that makes an average of $31.21.

Q. That is what I mean.

Q. Now, in the next one, in Montana, Judith Gap to Laurel?

A. Judith Gap to Laurel—that is somewhat greater than the actual, because the lands have appreciated very much since we bought the line, and I added something to that for increase in valuation.

Q. That is $44.61 per acre?

A. Yes, $44.61; that is correct.

Q. Now take it in Washington, the Wenatchee North Line, $111.34 per acre.

A. That is the actual cost.

Q. And the Waterville line, $36.48 per acre.

A. Yes, sir. On those two lines that is only a portion of the right-of-way; we have not acquired all of it yet.

Q. I understand that is what the right-of-way cost per acre, of this acreage?

A. So far, yes, sir.

Q. Now you have got below that the Vancouver, Victoria & Eastern Railway & Navigation Company, which foots up over a thousand acres of right-of-way, at $104.64 per acre.

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A. Yes, sir; that is actual cost of that right-of-way there.

Q. Then you have a total there of 4,210.43 acres, averaging $61.43, covering rights-of-way in British Columbia, in the state of Washington, the state of Montana and the state of Minnesota, averaging, actual cost—as I understand it, recent purchases—

A. Yes, sir.

Q. —$61.43.

A. That is correct. I will state here that this right-of-way average is the value outside of any city. We don't run through any cities or towns on those lines.

Q. I understand; I am eliminating the terminal situation there.

A. And also the station grounds in the smaller towns.

Q. Have you any idea what your right-of-way would average irrespective of station grounds, now that we have got the terminals out of the road? I mean the large terminals.

A. No, I wouldn't have any idea, Mr. Teal, without making a very exhaustive estimate again.

Q. There is no other place in that statement, is there, except in connection, I think you said, with the Canadian lines, that actually represents what you have recently paid for right-of-way?

A. No, I think not. The most of our lines are comparatively old and they have been in operation for several years and the country has increased in value by reason of the road being in there.

By Mr. Wimbish:

Q. I notice that you value your St. Paul terminal property at $22,709 an acre.

A. That is what the average is, yes.

Q. And the Minneapolis acreage at $36.168. Are those properties located relatively as well in one city as in the other?

A. Well, I should say Minneapolis had the greater area of more valuable property. You see, in St. Paul we come down what is called the Trout Brook valley, a narrow ravine, and turn around a corner (almost) into the Union Depot. It is just that little piece of ground from the Union Depot up to Seventh street that has any very great value.

Q. Then, your properties in St. Paul are not worth, relativell, as much as they are in Minneapolis?

A. They haven't got the acreage of good property that

they have at Minneapolis. That accounts for the difference in valuation.

By Mr. Teal:

Q. In connection with the various terminals that you have valued there, is it or is it not a fact that in any cases or in any considerable number of cases you have acquired lands for future use that are not now in railroad use at all?

A. Well, we do from time to time acquire lands that are not for immediate use, but are secured for use in the near future. We do not acquire them a long way ahead.

Q. Is that the fact running through that list?

A. That entire list, yes, sir.

Q. Didn't you have Winnipeg in there?

A. Winnipeg is in there.

Q. You have no line of road to Winnipeg at all?

A. We have a line surveyed up there now and have been acquiring station grounds there recently, with the idea of building up in there. At the present time there is no line up there. To get in there we run over the Canadian-Northern.

By Mr. Wimbish:

Q. How about your Duluth terminals? Is the property there more valuable than in St. Paul?

A. Well, Duluth is peculiarly situated. There is a very high bluff there, right close to the lake, making a very narrow ledge of property than can be utilized by railroads of any kind, and all the commercial business is along the main streets and the railroads are crowded in between the foot of the bluff and the lake, making a very narrow strip of land that can be used for first-class property of any kind, and that is why the valuation is high in Duluth. We have a considerable amount of that along the water-front which is very valuable.

Q. Why is it that your average value per acre for right-of-way in South Dakota and in North Dakota is so much greater than in Minnesota and Wisconsin?

A. I think the reason is that we run through a greater number of very considerable towns, and especially in South Dakota. We have a short mileage there, and we run through the towns of Sioux Falls, Yankton, Aberdeen, and Huron, and they are all very considerable towns.

Q. Generally that is the reason you assign?

A. Yes. It is the town property that increases the value of the whole?

By Mr. Walter:

Q. Does the Great Northern have a land company?

A. They do not.

Q. About how much of their land grant is still left?
A. I really don't know. There isn't a great deal of it.
Q. Something like 800,000 acres?
A. I should think in round numbers about that. That is just an estimate of my own. It is less than a million acres, I should say.

Re-direct Examination.

By Mr. Holden:
Q. Mr. Hayden, generally speaking, how is the Great Northern located in these different towns and villages through which it passes with reference to the center or the business part of such places?
A. In almost every case it occupies the central part of the towns or the villages, for the reason that the village has sprung up around the railroad since it was constructed; that is, when we first built in there, there was no town. When we located our station, the town was platted with reference to that station, and the business grew up immediately around the location of the depot itself. In a great many cases, on the older lines, and on some of the newer lines, the main streets are laid out parallel with the right-of-way, and the stores and banks and hotels and the main business of the town are right along, facing our right-of-way.
Q. You spoke about the terminal at Winnipeg and the fact that there has been a line surveyed and some station grounds have been acquired for that purpose. You also said that you were now operating into Winnipeg over the Canadian-Northern.
A. That is my understanding of it. We have a traffic arrangement with them to get to Winnipeg station.
Q. So that the Great Northern system is operating and putting traffic into and taking traffic out of Winnipeg over that line?
A. Yes, sir.
Q. It is engaging in the Winnipeg traffic at the present time?
A. Yes, sir.
Q. And has been for some time?
A. Yes, sir.
Q. Turning to page 15 again, where you have shown average value per acre of various rights-of-way and station grounds on lines under construction: Greenbush to Warroad,

in Minnesota, shows an average value of $31 plus per acre. Where is that located in the state?

A. That is up in the northern part of the state. The line runs from Greenbush to—

Q. I mean just generally now. It is away up in the northern part of the state?

A. It is in the extreme northern part of the state.

Q. How are values up there with reference to other portion of the state further south?

A. The land values are not high up there; it is swampy land, most of it, and the land values are comparatively low.

Q. And if I understand you, generally speaking, on this table the prices shown are exclusive of station grounds and terminal grounds?

A. Well, they include the station grounds, but in a great many cases in these lines there are no towns there; just simply a widening of the right-of-way for future station grounds when the business develops.

Q. There is provision there for a future town if one comes?

A. Yes.

Q. But it is a mere widening of the rural right-of-way?

A. Yes, sir.

Q. There is no element of substantial value in any of the station grounds thus laid out?

A. No more than there would be in the ordinary right-of-way.

Q. In any of your figures here have you taken into consideration any of the ore lands?

A. No, sir.

Q. Has there been any value added in any of your figures because of any ore lands that may be adjacent to the right-of-way?

A. No, sir, the ore lands have not been considered in any way in this estimate.

Q. No element of value has been injected into the figures because surrounding the right-of-way there may be ore properties?

A. No, sir.

Q. Now, you spoke about some of the records and in reference particularly to the consideration shown in deeds. What has been and is the practice in acquiring property by deed? Does the consideration always show the actual price paid?

A. It does not always show, no. There may be reasons why it is not considered advisable to show the true consider-

ation in a deed. It might affect subsequent purchases of other property in the same neighborhood, for instance, and quite a number of our deeds are taken for $1.00 consideration, where they may show a different consideration from what was actually paid.

Q. So in cases of ancient or long-time-ago purchases, where you have merely a record of the consideration in the deed, so far as you know, are you able to tell whether or not, with any degree of reliability, that represents what was paid? Of course in the case of a nominal consideration, I suppose it would obviously not be the actual payment; but what is your opinion on that general matter, as to whether the consideration shown in old deeds, in the early right-of-way purchases, would be any substantial guide in determining what was actually paid for the lands covered by those deeds?

A. Of course, I don't know, because that was before my time.

Q. Certainly.

A. But I should not take it for granted that that was the actual consideration.

Q. It might or might not be?

A. It might or might not be.

Q. I simply want to elicit the fact, because, as I understand it, it leaves the matter in a totally uncertain condition. Now, in reference to the right-of-way over Indian reservations, for instance. Was that right-of-way acquired without payment, or what has been the fact in that regard, generally speaking?

Q. In the Indian reservations we have to get special acts to allow us to go through the reservation—to build through, and before anything is done in the way of grading we have to settle with those Indians through the Indian agents, and where the land has been allotted in severalty we have to pay the individual Indian for the damage done, just the same as we would pay a settler outside of the reservation; and where the land has not been allotted, we pay the Indians as a tribe, pay them tribal damages, so much an acre. Now you take the Indian reservation through Montana. We built what we call the Montana extension, running from Minot, in North Dakota, to Great Falls. We ran through 400 miles of Indian reservation—the Fort Peck reservation and the Fort Belknap reservation (the Blackfoot Indians and others) and we paid there, in addition to some incidental damages to individuals, at the rate of 50 cents an acre right straight through,

and in all justice that land was not worth to anybody more than 50 cents an acre.

Q. That was at what time?

A. That was in 1887.

Q. Now, merely to illustrate a comparison between actual prices paid and the price contained in your statement, the committee of St. Paul real estate men returned, as my information is, a price per square foot for the Great Northern terminal land right contiguous to the Union Depot property, and also returned the Union Depot property at $8 per square foot. Is that correct?

A. That is correct, yes, sir.

Q. Has the Great Northern, in any recent period, purchased any land adjoining that property, and, if so, what rate per square foot did you have to pay?

A. They did purchase some property there outside, and that is the purchase which I stated Mr. Oscar L. Taylor had to do with as a real estate broker, acting for us in that particular deal. That is the property known as the Kelly building, on the corner of Sibley and Third streets, and also the buildings occupied by the St. Paul Rubber Company and Fairbanks, Morse & Company. It is the block of buildings running through from Sibley to Wacouta on the south side of Third street. The actual price paid for that property was $416,264, and taking the number of square feet in the property it amounted to $9.75 per square foot.

Q. Now, you spoke about having made some recent purchases in Duluth. Will you illustrate or state what the fact is in that vicinity, as to what you had to pay as compared with the figure you have shown as your valuation in Duluth?

A. We had to acquire an approach to the elevated trestle of our road on Rices Point, near the end of the Northern Pacific bridge across the bay to Superior, and extending up to what they call the Duluth-Superior bridge—that Cantilever bridge across the bay. We paid the lumber company for a portion of their property, near their mill, at the rate of 30 cents per square foot. That is about $12,000 an acre. And I have that same property in my estimate, taking it all through on Rices Point, at $9,000. We paid the Duluth Land & Warehouse Company, several years ago, at the rate of about $11,000 for small tracts of land.

Q. Going back up the Greenbush line for an illustration of the country: do you recall sales made up there of some of the townsites at public auction?

A. The land on which the town of Greenbush is now lo-

cated—that was the end of the line for a number of years after we began operating—that land was owned by the state of Minnesota and sold at public auction for about $23 per acre. But that was a high price for land in that neighborhood, because it is mostly swamp land up through there.

Q. What effect on a piece of land does the knowledge that it is available or desired or in demand for railroad purposes, have on the price that has to be paid for land of that kind?

A. It is my experience that it raises the value very fast and very rapidly and very excessively over what it could be purchased for for other purposes. They seem to consider that railroad use is the highest use to which land can be put, or at least the necessities of a railroad company make them demand prices that they could not get from anybody else. Do I understand your question?

Q. Has there been a recent case here in the vicinity of St. Paul which would illustrate the point—a condemnation case?

Mr. Teal: Mention the case to him.

Mr. Holden: I can't mention it myself. I know where it is, but I don't know what it is. If you know the facts you may state them.

A. I do not know enough of the facts to give you an intelligent answer as to the prices paid, because I have not gone into it.

Mr. Walter: As a matter of fact, the land they are trying to condemn belongs to another railroad, doesn't it, and that is the reason the price goes up so high?

The Witness: No, the tract they condemned belonged to private individuals.

Mr. Walter: I understand it belongs to another railroad that does not want this company to get it.

Mr. Holden: No, your information is wrong.

By Mr. Teal:

Q. You spoke of a block down here, where you paid $9.73 per square foot.

A. That is what it averaged, yes, sir.

Q. Did I understand you to say that that block was covered with brick buildings?

A. It has four story buildings on there now—brick buildings.

Q. And was occupied and in use at the time?

A. Yes, sir.

Q. And the land adjacent thereto that was valued on the

same basis by the railroad, was valued without respect to improvements, was it not?

A. It was valued as bare land by the real estate men at $8. I have added to that 25 per cent, which made it $10, for value of improvements and anything that had to be destroyed or removed for the purpose of getting the property in shape for railroad purposes.

Q. And if you had reduced this $9.73 to the bare land value, how much would you have paid for it? In other words, how much were the buildings worth?

A. You can't figure that way, because if you figure the value of the buildings it is only what you would get for salvage, the building torn down, because the buildings are more valuable as they stand, for commercial purposes than for anything else.

Q. If some one else was buying it they would buy the buildings, wouldn't they

A. We bought it through an outside party.

Q. At any rate it is covered with a block of buildings?

A. Yes, sir.

Q. Now, there is one thing I want to get definite; of course I know it is not done for any purpose, but each time any definite information is tried to be secured, I find that the questions are asked, then it apparently becomes impossible to get any definite information. Now, I asked you, in connection with the Seattle property, if you did not think your books would show the actual price that you had paid for your terminals there. You told me you thought they would.

A. Well, I think they will, that is, as far as the cost is concerned.

Q. On re-direct examination you were asked if the deeds showed the actual cost, the actual purchase, and therefore if they didn't everybody would be at sea again.

Mr. Holden: I think you and Mr. Walter were both asleep at that time; I was talking about St. Paul.

Q. Well, I wasn't talking about St. Paul. So we won't misunderstand each other; if the books—not deeds—of the Great Northern Railway Company, or whoever purchased that land for the Great Northern Railway Company, showed the actual cost of the Seattle terminals. That is what I mean.

A. I think they will, and I will tell you why: that is a comparatively recent purchase, from 1892 up. What Mr. Holden was asking about was away back in the early days, and that is a very different thing.

Q. I want to get the Seattle actual purchases.

A. I think we can get the actual cost there.

By Mr. Holden:

Q. Generally speaking, are all of the records that are available and all of the details upon which you have worked in making up these figures, open for examination and inspection by the gentlemen on the other side of this case, to the fullest extent they may wish?

A. Surely.

Q. From Minot, North Dakota, to the Montana state line, I understand you paid 50 cents an acre for the right-of-way.

A. Not at Minot. That was in Montana. I said the line was built from Minot, but the reservation I speak of started from the Montana line and went over to—

Q. Do you remember what you paid from Minot to the state line?

A. We got considerable of that by act of Congress.

Q. Most of it you didn't pay anything at all for; it was public land, wasn't it?

A. We got a great deal of it from the public land grant.

Q. And it is in your list at $350 an acre?

A. Yes; that is the present value of farm lands through there.

Mr. Holden: If your Honor please, after consultation, in view of the various lines interested having headquarters at various places, we have agreed, with your consent, to resume the hearing at Chicago, on Friday, April 23.

(An adjournment was thereupon taken until the morning of Friday, April 23, 1909, at 10 o'clock, at the office of the United States Marshal, in the Federal Building, Chicago, Ill.)

Room 628 Federal Bldg., Chicago, Ill.
Friday, April 23, 1909.

The taking of testimony was resumed before the Special Master, Hon. Frederick N. Dickson, at the above time and place.

Present:

On behalf of the Complainants, Mr. Hale Holden, Mr. F. C. Dillard, and Mr. Charles Donnelly;

On behalf of the Defendant, Mr. Luther M. Walter, Mr. J. N. Teal, and Mr. W. A. Wimbish.

J. A. MUNROE, being duly sworn as a witness on behalf of the Complainants, testified as follows:

Direct Examination.

By Mr. Dillard:

Q. Where is your home, Mr. Munroe?

A. Omaha.

Q. What is your business?

A. Freight traffic manager of the Union Pacific.

Q. What experience have you had in railway work? I won't be mean enough to ask you how old you are.

A. I have been actively engaged in it on the Union Pacific lines since 1882.

Q. What positions have you occupied on the Union Pacific lines in that time? Just in a general way, Mr. Munroe.

A. Assistant general freight agent, general freight agent, and freight traffic manager.

Q. Had you had any experience with other railroads prior to that time?

A. I had.

Q. State what it was, please.

A. I was general agent of the C. St. P. M. & O. Railway at Omaha, in 1881, and I was afterwards assistant traffic manager of that line at Minneapolis, in 1882.

Q. What years were you at Minneapolis, Mr. Munroe?

A. 1882.

Q. Just for that year alone?

A. That is right; only a portion of that year.

Q. And you were how long with those roads—1881 and 1882?

A. Yes, sir.

Q. The Union Pacific Railway extends where?

A. From Council Bluffs and Omaha to Ogden, Utah, with various lines in Kansas and Nebraska, and also from Kansas City to Denver.

Q. You connect with the O. R. & N. and the O. S. L.?

A. At Granger and Huntington, respectively.

Q. Are you quite familiar with the traffic conditions on the O. S. L., O. R. & N. and Union Pacific?

A. More especially on the Union Pacific; and generally speaking as to the O. S. L. and O. R. & N.

Q The relationship between the three lines is of such character that your duties demand intimate familiarity with all affairs of the Union Pacific and quite close intimacy with the traffic affairs of the other related lines, do they not?

A. They do.

Q. Did you ever, at any time, have direct control and jurisdiction of the O. R. & N. and the O. S. L.?

A. Yes, I had; I was one of the officers of the three properties for quite a while.

Q. When was that?

A. It was from 1886 to 1893.

Q. Now, Mr. Munroe, I shall presently desire to go somewhat into the history of these lumber rates, somewhat into the movement of lumber, but before I do that I wish you would please take the Table 5. Have you that book?

A. No, I have not.

A book was handed to the witness.

Q. Table 5 in the Abstract of Evidence which you have in your hand. That table is copied from an exhibit which was introduced in the trial before the Commission by Mr. W. H. Anderson, testifying in behalf of the complainants, and I presume somewhat in the nature of a rate expert—was, he, Mr. Teal?

Mr. Teal: He was simply making a statement on behalf of the Interstate Commerce Commission.

Q. Then, simply making those statements. I find, first, under the table you have in your hand, a comparison of rates between Argyle, Georgia, 1013 miles, and Chicago, Illinois, and next a comparison between Albany, Oregon, and Opal, Wyoming, a distance of 1000 miles of the two rates, and a per ton per mile comparison. I will ask you to state whether or not, from a traffic point of view or any point of view which should enter into the making of a rate, the comparison there made by Mr. Anderson is a fair one or one which can justly

be used to throw any light on the propriety of the rate made eastward from the point in Oregon—Albany; if it is a fair and just comparison, simply so state, without more; if it is not, please explain in your own manner and quite distinctly so that people who are not particularly versed in traffic may understand the impropriety of the comparison?

A. Well, I think no significance attaches at all, from a traffic standpoint, to the comparison. I think so for this reason: the circumstances and conditions are entirely dissimilar. Chicago is, or was in years gone by, a large consumer of lumber. It had a very large lumber district here—in fact one of the features of the city. It was used as a dumping ground for surplus lumber from all regions round about here. Georgia pine, always regarded as a superior lumber for flooring, particularly in the east, naturally found more or less of a market here. The conditions here were exceptional. The lumber was supplied quite largely from schooners coming in here from Lake Michigan and from Green Bay ports, both Wisconsin and Michigan origin, and it was a large consuming center at that time, especially for a few years following the fire. Now, as to Opal, Wyoming, there really is nothing there, more or less, than the side track. The 40¢ comparison to Opal, in my judgment, is unfair; first, because there is no commercial consumption at Opal. It is simply an incident that it happens to fall in substantially the same mileage as quoted here from Argyle to Chicago. If Mr. Anderson, or whoever compiled these figures, wanted to be fair, instead of taking the minimum distance at the maximum rate, it would have been more natural, it seems to me, to at least have taken the average distance, at the average rate. The facts are, that this rate of 40 cents to Opal was simply a reflection by application to an intermediate point of the 40 cent rate current from the Pacific Northwest to Denver. When the rate was made, Opal never entered the minds of any of the makers of the tariff; nor was there any other business of moment intermediate between Opal and Denver. It was a question of going into the Denver market, and the application of the Denver rate so made, under the fourth section of the Interstate Commerce Law, to the intermediate points. Commercially, this comparison means to me absolutely nothing, and I cannot imagine how anybody seeking a fair adjustment would get any particular light from it.

Q. The comparison, then, was simply made by putting a ruler down somewhere in Georgia and finding another thousand

miles and making a per ton per mile comparison, without looking into any other conditions which should influence the rate?

A. I think so.

Q. Except distance. That would be indicated by the points there selected, would it?

A. It would.

Q. Does the statement which you have made apply to Fossil, Wyoming, and Granger, Wyoming, and Green River, Wyoming, and Point of Rocks, Wyoming, and Lava, Idaho, and Bancroft, Idaho and McCammon, Idaho?

A. Yes, sir.

Q. Take each of those places Fossil—what is it?

A. Fossil is simply a station for side track purposes on the Oregon Short Line. No community there, more than two or three houses possibly, of section men.

Q. Granger is something more; what of that?

A. Granger is the junction point between the Union Pacific and the Oregon Short Line rails, but notwithstanding that fact it is so small that the trains are operated to and from Green River, main line point, 30 miles east.

Q. Well, he has made a comparison with Green River. How much business is done at Green River?

A. A very small amount of business. Green River is a district terminal on the Union Pacific, a small point in Wyoming, of a few hundred population.

Q. Now Point of Rocks?

A. That is—

Q. About what its name implies, isn't it? That is another point similar in character?

A. Were it not for the necessity of the railroad having a side track for meeting and passing trains, there would be no Point of Rocks.

Q. Lava?

A. Lava is similar.

Q. Now Pocatello and McCammon are two very good points, are they not?

A. McCammon is not much of a point. Pocatello is quite a good point.

Q. At these points—Opal, Fossil, Granger, Point of Rocks, Lava, Bancroft—there is no competition there of any kind, is there?

A. Local and insignificant business in all lines. Insignificant in volume, I mean—very, very small.

Q. Now, Mr. Munroe, I shall presently come to discuss the

question of the movement of lumber from various points, but before doing that, and while it is in my mind, you stated that at one time there was some movement of lumber from the Southeast and Georgia into Chicago. At the present time, is it not a fact that lumber from Florida, Georgia and Mississippi does not move in appreciable quantities to Chicago but that such yellow pine as comes here comes from west of the Mississippi river?

A. That is my understanding.

Q. That is your understanding?

A. The Chicago lumber market has practically ceased to be a factor, here in Chicago, as we all know. The business is nowhere near the volume what it was twenty-five years ago.

Q. You stated that you were connected with some of the lines in Minnesota and Wisconsin, in the white pine district, as early as 1881 and 1882, and then went to the lines with which you are now connected. I wish in your own way, at such length as may be necessary, and so that it may clearly appear, you would now state the movement of lumber in those early days, say to St. Louis, likewise to Missouri river points and into Kansas and Nebraska; what was the source of supply, what rates in that time were made as to yellow pine and fir lumber, how such rates came to be made, whether there was any movement of yellow pine and fir, appreciably, to the points I have named, when the movement of those two lumbers began to improve and became considerable. In a word, I desire a history of the lumber movement and rates from the earlier days until such time as the lumber from the Pacific Northwest became a factor in the territory to which I have referred.

A. Generally speaking, for the fifteen years prior to and including 1895, the Missouri river, Nebraska and Kansas got substantially all their lumber from the white pine districts of Wisconsin, Minnesota and Michigan, respectively. When I went to Omaha, in 1881, we started what we called a lumber line, and the C. St. P. M. & O. was the first road to build box cars capable of carrying two length of 16 foot lumber. It was impressed very forcibly upon us, as our president (H. H. Porter) was the first one in this country to adopt the plan of putting on the outside of the box cars the full name of the road, and the question arose as to whether the side of the box car was large enough to take the name "Chicago, St. Paul, Minneapolis & Omaha." Well, we finally got it on one side, and put "Lumber Line" on the other, and we worked up a very large traffic from St. Paul and Minneapolis as basic points,

the interior white pine points in Wisconsin taking differential points higher, to Sioux City, Council Bluffs, Omaha, Atchson, St. Joe, Leavenworth, Kansas City and points generally west thereof in Nebraska and Kansas and even to Colorado. Our principal competition at that time was lumber similar in character which moved through the Chicago lumber district to which I have referred. There was always the strongest kind of competition in those days between Chicago, on the one hand, and the primary points in Wisconsin, Minnesota, and that region, on the other; and in addition to that, large quantities of lumber moved in the log from points on the Wisconsin and Chippewa rivers to the Mississippi river, were floated down the river in rafts, and commenced stopping some at Dubuque, more at Clinton. Rock Island was a very important point; Hannibal was, and St. Louis; and there was also at that time a very large traffic in shingles. We never heard in those days of the Pacific coast lumber to any marked degree, nor did we hear of it until subsequent to 1895. There were slight rumblings about it in 1895, but the movement was comparatively small. The fir lumber was unknown, and the competition in the white pine was such, and there was such a surplus of it, that the dealers in that section continued to buy from the east. As time went on the supply became very much exhausted. All these points on the Mississippi river practically dropped out, and the Pacific Northwest at first took practically all of the shingle traffic. Later they became a very much stronger factor on the pine lumber and also the fir. But in the meantime we had a new factor in the field, as to lumber of Missouri—Arkansas origin,—and also Texas and Louisiana. The competition on that was very keen, particularly at Kansas City, and a nominal differential obtained at that time to Omaha above Kansas City. The Southern people always contended that their lumber weighed more per thousand feet, and therefore a lower rate per ton per mile was necessary in order to market it, and all sorts of rates were made at that time. Finally the whole question as to what differences should obtain, went to arbitration, and in the meantime the white pine was dropping out, from natural causes, and later ceased almost entirely to be a factor. That left very largely the market to the southern material, and to-day the southern lumber is a strong factor along the Missouri river, but losing its hold gradually as against the western product; and the only reason that we can see, from our standpoint, why there is not more western lumber coming in, is because they have a better market across the

water, in foreign lands, than they can get just at this time in Kansas and Nebraska; and there is a certain amount of southern lumber that is going out all the time, either direct or through the jobbing points on the river, but it is gradually changing, and in my judgment the time is not far distant when the Pacific coast will do a very much larger proportion of the business than they are doing to-day, and that, too, from causes entirely foreign to and quite beyond the power of a freight rate to change.

Q. In those days concerning which you have been testifying to, were logs floated in the raft to St. Louis and there cut?

A. They were very largely to the points north of St. Louis, and I think also to St. Louis, and lumber was also floated in the raft. Originally the log, and into the lumber. The river was used at that time, though, very actively for transportation of the lumber and the log.

Q. In order that there should be any computation at all of the lumber from the northwest, and the yellow pine lumber from the yellow pine district, in the territory that you have described, what was necessary to be done with regard to the rates from those two points, and as a matter of fact, what was done?

A. Well, the rates were extremely low. The southern pine met the northern product very largely on the Missouri river, and that section was used as a dumping ground for the southern mills; and when you say Missouri river, you ought to automatically say Nebraska and Kansas.

Q. When you say the southern pine met the northern product very largely, what do you mean by the words "very largely"? Not in very large quantities in those days do you?

A. The northern pine, as I have before stated, had a practical monopoly of the market prior to 1895. From that time on it steadily diminished, and the southern lumber increased right along.

Q. Those rates, then, in your judgment, that were established for yellow pine, were exceedingly low rates?

A. They were.

Q. The same is true of the rates that were established for fir lumber?

A. That is true.

Q. The floating of logs down, and the floating of lumber down as low as St. Louis also had what effect upon the rates of that day from the white pine district,—the rail rates?

A. It was one of the controlling factors. We were confronted with this situation: on the C., St. P. M. & O. at that time we had large lumber interests at a place in Wisconsin called Eau Claire, 88 miles south of St. Paul. The question was whether the logs should be converted there into lumber, transported by rail to Omaha, or floated down the river in the log, sawed at Clinton, Iowa, and Rock Island, and reach Omaha by the Rock Island. That brought about this discussion—what we called the Bogue war—and the decision reached was—I am speaking now from memory—that Eau Claire should take a differential of 2 cents per hundred above the Chicago rates, and that obtained for a number of years, and seemingly was satisfactory to the Eau Claire interests, and also to the interests along the Mississippi river, who got their supply in the log from the north by floating it down the river in the rafts.

Q. Then, if I follow you rightly, when the chief and almost only source of supply was the white pine country, the rail rates were made low from there by reason of water carriage?

A. They were.

Q. And yellow pine and Oregon fir and Washington fir,—Washington lumber,—finding those low rates made for white pine necessarily had to have an exceedingly low rate applied to them so that they could compete at all?

A. That is true. It should be stated there that—

Q. Now, one other question before you leave that point. You referred to the competition between the Eau Claire district and Chicago?

A. Yes.

Q. The rates into Chicago from the white pine country were also affected by water, were they not,—water movement—the lake movement?

A. Oh, controlled by it.

Q. Controlled by it. Now I wish, Mr. Munroe, that you would explain a little bit fully what you mean by stating that the rates to Chicago from the white pine district in those days were controlled by water. State what sort of rate the schooners make?

A. Why, the bulk of the lumber came to Chicago in those days by schooner from points on Lake Michigan and Green Bay, and the rates varied from 50 cents a thousand, perhaps, to a dollar and a half a thousand,—maybe at times they got more,—and these schooners used to come down here in large

numbers and go to the lumber district and unload and discharge their cargoes, and we used to put, in those days, train loads of empties in there, and they would send this lumber west to yards controlled in the west by parties identified with the Chicago lumber district; and these rates also were a determining factor, as made from Chicago for the rates from the Mississippi river. So that the water competition starting at Chicago virtually was the factor controlling all rates on all lumber to Missouri river points from the points in the north direct.

Q. Your memory is that the rate at that time was 50 cents per thousand feet?

A. Fifty cents per thousand feet from the nearby points, up to the higher rate as they got up along Green Bay, Oconto, Marinette, and that country.

Q. That does not include the handling to and from the boat?

A. No.

Q. But just simply the actual carriage on the water?

A. That is it, ship's charge.

Q. At the time that these lumber rates were raised, what is your judgment as to whether the pre-existing rates were reasonable or unreasonable, or too low?

A. You refer now to the rates from the west?

Q. I refer to the rates from the west?

A. The 40-cent rate?

Q. The 40-cent rate to St. Paul, and our rate to Omaha?

Mr. Teal: Let us get this defined. If this witness is testifying about the Northern Pacific road, let us know what he knows about it, and their traffic, so as not to confuse this. I would like to know just which road he is testifying about—what point?

Mr. Dillard: We are testifying about every rate from that western country.

Mr. Teal: And over every road?

Mr. Dillard: As to the reasonableness of the rates.

Mr. Teal: That is what I want to know.

Mr. Dillard: I will refer particularly to the Missouri river rate.

Q. Mr. Munroe, I shall confine your examination for the present simply to the Union Pacific rate,—the rates over the Union Pacific lines. Now, the rate was raised and became effective November 1, 1907. The rate that you carried to

Missouri river points prior to that time, in your judgment, was it a reasonable rate, or was it a low rate and an unreasonably low rate?

A. Unreasonably low, in my judgment.

Q. You had carried that low rate to meet the competition to which you have referred in times past, had you?

A. Yes. That rate was a reflection to Omaha and Sioux City on the 40-cent rate as established by the northern lines to St. Paul. We always felt that the differential of 5 cents obtaining at the lower points above St. Paul was too low. We recognized that the conditions might be, and doubtless were, different at St. Paul and Minneapolis from what they were at Omaha. I speak of Omaha as the typical point. We were getting at that time a large amount of lumber from points near St. Paul and Minneapolis, which were primarily in the forests up there, and we never got less than 10 cents a hundred for the St. Paul-Omaha service. Therefore we felt that if 10 cents would meet the commercial conditions at Omaha on St. Paul lumber, there was no reason why that difference would not meet them on Pacific coast lumber, as compared with the rate over the northern lines of 40 cents to St. Paul; but we finally compromised, as I recall it, on a 45-cent rate, which made the rate, we always thought, unduly and unreasonably low from the west, and we felt that it was the best settlement, however, we could make of that proposition at that time.

Q. What were the conditions that led to the raising of the rate, as shown by the tariff effective November 1, 1907, and why was the rate raised?

A. The general increase in the cost of conducting transportation, the odious comparison made between rates abnormally low, and what we contended to be abnormally high; the change in commercial conditions, and every other factor entering into the lumber problem, was on a higher plane than the railroad rate. Everything we had to buy was going up. Everything we had to sell, in the way of transportation, was going down, and we felt that we were entitled to better revenue on it, and that we could get it without hampering, or injuring, or unduly discriminating against any person or locality.

Q. Did not the depletion of the white pine forests enable you to raise the rate to nearer what you concede to be reasonable compensation for the movement of lumber, without

injustice, in your judgment, to the lumber producer of the northwest?

A. It did.

Q. Returning, Mr. Munroe, to Mr. Anderson's thousand mile comparisons: in making a lumber rate, can you simply lay down a thousand miles between all points and make the rate accordingly?

A. Certainly not.

Q. I wish you would simply state, in a general way, offhand, some of the factors that occur to you that should be considered in the making of a lumber rate from various points of production. Upon what would you act?

A. Of course you have to consider the distance; the service rendered by the carrier. You have to consider the consuming market; determine, as near as you can, what rate, fair and just to yourself, will be fair and just to the producer along your line, to enable him to meet in that market the competition from other sources of supply, foreign alike to you and to him. Then you have also got to bear in mind the car movement as between loads and empties; and if you have another traffic which will admit of your getting a return load, your ability to make a lower rate is correspondingly increased. This 40-cent rate referred to here at Opal, Wyoming, as I said, was simply an incident. It was the Denver rate. There was no traffic important in volume at points between Opal and Denver. It was made primarily to go into the Denver market. When we got at Denver we came in contact with local lumber from nearby points on the Rio Grande, in southern Colorado and in New Mexico, the rates on which ranged from 10 to 15, perhaps 17 cents, a hundred. We also came in contact with southern lumber, taking at that time a rate of substantially 35 cents, as I recall it, from such points as Arkadelphia, and also the Louisiana and Texas producing points. We also had a rate of 24 cents, I think it was, from the Missouri river, which obtained on such lumber as might move through those river gateways, occasionally more or less white pine,—very small; but when the rate started, there was quite a large amount of it. Today it has practically dropped entirely out. The lumber rate, the same as any other, is a co-operative one between the carrier and the producer and the consumer, with a view of expanding, as far as possible, the trade in general on terms on which each one will make a fair and reasonable profit and remain in the business.

Q. Now, to illustrate the possibility of making a mere distance scale and tariff, I might take the conditions at Chicago. What was your rate prior to the raise in the rates—what I mean by your rate is the rate through Omaha from the Northwest to Chicago?

A. You mean the rate from the Wisconsin pineries to Chicago?

Q. No. I haven't made myself clear.

A. From the Pacific coast northwest to Chicago.

Q. From Pacific coast, for instance, Portland, or some point of production, to Chicago, what was your rate at that time?

A. My recollection is it was about 10 cents higher than to St. Paul.

Q. Well, your rate to Omaha was 50 cents, wasn't it, at that time?

A. Well, we had 45 and 50.

Q. I mean immediately prior to the raise the rate to Omaha was 50, and to Chicago was 50?

A. Yes. That was brought about in this way: 10 cents higher than to St. Paul, which happened to fall in the "50" column, and that obtained at Omaha on certain lumber from the coast.

Q. St. Paul had a 40-cent rate, had it not?

A. It had.

Q. And there was a rate between St. Paul and Chicago of 10 cents, was there not?

A. Yes, sir.

Q. Forced down low by lake competition?

A. Yes.

Q. You then had to meet—that is, lumber moving over your line and from your points of production,—had to meet the 50-cent rate at Chicago, or those mills could never reach Chicago at all, could they?

A. That is true.

Q. Then in the making of a rate all those conditions must be taken into consideration, must they not?

A. They must.

Q. In the raising of these rates, you tried to give due heed to those, I presume, Mr. Munroe?

A. We did.

Q. And attempted to make a rate which was fair to the producers on your lines in the Northwest?

A. We did.

Cross-Examination by Mr. Teal.

Q. Mr. Munroe, do you remember when this lumber rate case was tried in Washington before the Interstate Commerce Commission?

A. Yes, sir.

Q. Where were you then?

A. I was at Washington at one of the hearings then; I was with the Union Pacific.

Q. And weren't you in Washington part of the time when this trial was going on?

A. Yes.

Q. Were you called as a witness in that case?

A. I think not.

Q. You don't remember whether you testified in that case or not?

Mr. Dillard: It is admitted he did not.

Mr. Teal: It is admitted he was in Washington and was not called as a witness?

Mr. Dillard: He was there during part of the hearing.

Mr. Teal: And was in the employ of this company at the time.

Mr. Dillard: He was in the employ of the railway, yes, and in the same position that he occupies now.

Mr. Teal: In the same position he occupies now.

The Witness: Yes.

Q. Mr. Munroe, at the time that these rates were advanced, effective November 1, 1907, was it, how long before that had this advance been considered and discussed?

A. Well, I couldn't give you any particular time, but we had talked about it off and on for perhaps a year, I should say.

Q. Who are "we"?

A. It had always been a current topic in our Omaha office about those lumber rates. I have heard them discussed more or less pro and con. It did not leave any indelible impression upon my mind, but personally I will say I have always hoped to live to see the day when we get what we term a respectable rate on lumber from the West to the Missouri river; and I have not hesitated to talk about it anywhere with anybody or in any way. I thought it was a proper topic to discuss.

Q. Was it discussed with other railroad traffic men in that same territory?

A. Not except in a general way. I don't recall any lumber conferences that I attended, or anything of that kind.

Q. Was it just a happen-so that the rates all went into effect the same day over all the same roads in a joint tariff?

A. Oh, no, I suppose not.

Q. Don't you know it was not a happen-so?

A. I am willing to admit that those rates are made by conference.

Q. Who between?

A. The interested parties.

Q. Who are the interested parties?

A. The Northern Pacific, Great Northern, Union Pacific, O. R. & N., Oregon Short Line.

Q. All railroads?

A. All railroads.

Q. Excuse me. You can answer the questions and then you can explain. All railroads. Those are the interested parties in the lumber rate?

A. Yes.

Q. Then the interested parties in the advance of this lumber rate, from your standpoint, are the railroads that you have mentioned engaged in the carrying of lumber from Pacific coast points to the Missouri river and the eastern territory?

A. They are some of the interested parties. They are the interested parties.

Q. Well, they are the interested parties you were talking about, aren't they?

A. Not alone.

Q. Who else was interested?

A. The dealers along the Missouri river are interested. The shippers in the pineries are interested, and the carriers, and the consumers generally are interested.

Q. Were all of these people—the consumers and the others you mentioned—called into these consultations when these rates were fixed?

A. I cannot speak as to the shippers, because I don't come in contact with them; but I can say that as far as the lines terminal are the Missouri river are concerned, that we did have more or less conference with what we term the trade, receiving the lumber, and that it was not our purpose, nor did we take any action without canvassing the matter pretty thoroughly in advance, and we took such pulsations as we

could, and we came to the conclusion which resulted in these rate changes which we sought to make effective on November 1, 1907.

Q. These conclusions that you reached and you made effective were the result of these conferences between the traffic managers of these various roads, which was finally promulgated by the Transcontinental Bureau in that tariff, was it not?

A. Yes.

Q. And that is the way the rate was made, and that is the way it was promulgated?

A. The rates are made by conference.

Q. Well, between these parties I speak of, the traffic managers of the road?

A. Yes. I say the traffic managers—I mean the traffic departments.

Q. The traffic departments?

A. Yes.

Q. You are familiar, are you not, with the movement of lumber over your own road?

A. Why, reasonably so.

Q. Have been for a long time, haven't you?

A. I have.

Q. You were with these roads before the merger of the Southern Pacific with the Union Pacific, weren't you?

A. I was.

Q. What was the rate from Willamette Valley points and Portland points to Denver before the merger?

A. I do not recollect, Mr. Teal.

Q. Well, it was the same as over the Union Pacific, wasn't it?

A. At that time I think the Southern Pacific lumber came out by way of Sacramento.

Q. A 40 cent rate, was it not?

A. That is my impression—40 cents.

Q. You competed from Denver, did you not? Willamette Valley lumber competed with the Washington fir and the other fir in Denver on a 40 cent rate?

A. Yes, came in competition with it.

Q. And at that time the Southern Pacific people would not turn you over any of that lumber to Portland, would they—give you the long haul?

A. I think it all came by way of their line to Ogden.

Q. And that was a very much longer mileage by way of Portland, wasn't it?

A. Yes.

Q. And they crossed three mountain ranges, didn't they, in getting to Denver?

A. Yes.

Q. And still they insisted on hauling the traffic, didn't they?

A. Yes.

Q. After the merger it was sent the other way, wasn't it?

A. Yes, it was.

Q. And the Sacramento gateway was closed?

A. Practically.

Q. Do you know the rate on shingles from San Francisco into Salt Lake?

A. No. I had an impression it was 50 cents, but I wouldn't want to testify.

Q. You don't know what the rate is on red wood shingles?

A. I don't recall. I think it was 50 cents, but I won't be sure.

Q. Do you know what the rates are from the Oregon points?

A. No, I don't recall. I don't keep in touch with those rates from the west of Salt Lake. If you will allow me I would like to say a little about this movement from the Willamette Valley via Ogden.

Q. Yes, sir. Say what you please.

A. And I may add incidentally that we hauled that lumber from Ogden to Denver for less money than we hauled Oregon lumber east of Granger. The Southern Pacific had a connection in the Rio Grande route from Ogden to Denver, and they had a basis via that line which was extremely and abnormally low; and, speaking from the standpoint of the Union Pacific and of the lumber traffic by itself, for Denver, from points in the Willamette Valley, we never had a regret at not getting a single pound of it. And had it not been for relations in general, as between the Union Pacific and the Southern Pacific, we would have stayed out of that business, because we never felt it yielded a proper return of profit, but we continued in it, and there was a limited—not very large—movement.

Q. Let me understand. You are not referring to the 40 cent rate to Denver from Portland as being unremunerative, are you?

A. I was referring to our 40 cent rate from Willamette Valley points via Sacramento and Ogden.

Q. Which is "our?" I don't know what you refer to when you say "our."

A. By "our" I was referring to the Union Pacific proper division for the east of Ogden service.

Q. Oh yes. East of Ogden. But still, as a matter of fact, you know it is so, don't you, that the Southern Pacific did haul the lumber that way?

A. Oh yes.

Q. And you could turn it over to the U. P. at Portland?

A. Yes. They took it by way of Ogden. I know that.

Q. Now, this Table that you were testifying about: that does not purport to show anything but simply a per ton per mile rate covering various distances, isn't that correct?

A. Practically so, yes. I haven't—

Q. That is all it pretends to show, isn't it?

A. I think so.

Q. Now, Mr. Munroe, you are very familiar with lumber rates. Do you say that those rates—I am speaking now of the old rates, not the advanced rates—

A. The 40 cent rate, you mean?

Q. Yes, the 40 cent basis—that those are the lowest per ton per mile rates on lumber?

A. No, I don't say so.

Q. No. I say you don't pretend to say that, do you?

A. I wouldn't say so, without a further examination. But may I add this: that when we get any rate per ton per mile where those 40 cent rates are, in slang parlance, we sit up and take notice.

Q. For many years you have gotten a higher rate per ton per mile over the Union Pacific rate on lumber than the Northern Pacific road, have you not,—taking your road to Omaha and theirs to St. Paul and to intermediate points? Have you ever examined into that?

A. Well, our distance to Omaha is substantially the same as at St. Paul, so that the application of a higher rate would prove that mathematically. I hadn't thought of it in that line before.

Q. Do you consider the advanced rates sufficiently remunerative, that were effective November 1, 1907, for hauling lumber?

A. I think there is some justification for them. I feel it is a very low rate even at the proposed advance.

Q. Still very low?

A. I think so.

Q. Will you keep on agitating that until you get another raise?

A. No; I think that represents about our maximum. Conditions might change. I can conceive a condition when we might have to have more money. I don't know.

Q. Out of lumber?

A. Possibly. But it is very unlikely; very unlikely.

Q. Taking the Northern Pacific road and the Union Pacific road, in a general way could you state whether or not the advanced rates over their road on lumber is remunerative?

A. I don't feel competent to testify as to their line.

Q. You don't feel competent. You have been over their road?

A. I have.

Q. You, of course, are familiar with the cost of operation on your road, and probably are with the Northern Pacific. Taking the percentage of cost of operation to gross earnings on both of the roads, which is operated at the lowest cost?

A. I can't testify on that; I don't know.

Q. Don't you know, Mr. Munroe, that the Union Pacific for the last year has been operated at the lowest cost of any railroad in America?

A. I know we have had a very low operating cost, but I don't know that it is the lowest of any road in the country.

Q. Don't you know it has been referred to as a marvel—

A. I know it has.

Q. —in the matter of the cost of operation?

A. Yes.

Q. Now, then, if, for instance, your old rates average higher than the advanced rates do on the Northern Pacific, would you still state that there was a justification for your advance?

A. I think there is justification for it.

Q. And you would still think that the old rates were unremunerative,—your old rates?

A. Yes, I think they are unremunerative. And I think our prosperity arises from causes practically foreign to the lumber movement, east bound, at those rates.

Q. What do you call a remunerative rate?

A. One which yields a fair excess above the cost of movement and contributes its fair share to an interest return on the investment to the owners.

Q. I think that is a very fair answer. Now, that being

true, do the lumber rates pay the cost of service, in your opinion?

A. I think we can handle it as a surplus proposition for filling out trains; otherwise, correspondingly light. If we had to move all of our traffic on these rates we could not live; but sandwich the lumber business in with our other business, I think they represent something in excess of the actual cost of the movement; but I do not consider that they contribute their fair share to the owners of the property.

Q. What you mean by that is that if you just hauled lumber alone you would not make the cost of operation?

A. I mean that, yes.

Q. Now, it is a fact, is it not, that the Union Pacifi's earnings has been very largely and constantly growing for a series of years?

A. They have been.

Q. Now, take, for instance, your east-bound rates on salmon, wool, hops, hides, canned goods: are they low or high rates?

A. Well, we regard all the rates on all Pacific coast products, east-bound, as low rates. Let me explain.

Q. Well, pardon me just before you go on. Are they remunerative rates?

A. We believe that we are justified in making them, and we keep them somewhere near in the same category, but not quite the same as lumber.

Q. But I say, are they remunerative?

A. We feel they contribute something in excess of the cost of the movement, but not properly.

Q. Now, let me ask you another question.

A. Now, let me explain why I think that.

Q. All right, go on.

A. It is very easy, of course, to take a rate, if you please, of a dollar on dried fruit as representative of the revenue the carriers get from a primary point in California or Oregon or Washington, to the Missouri river. Now, what do we do? We blanket that rate all over this eastern country. The lines west of the Missouri river pay out of the dollar rate the entire revenue accruing to the lines from the Missouri river, if you please, to the Atlantic seaboard. These rates are made on a general principle and often result in a very low rate per ton per mile on a commodity, leaving the impression in the minds of the public that it is high class. Let me illustrate: We have out of California about 30,000 carloads a year of citrus fruit, largely oranges, and some lemons. That traffic

represents in revenue to the line west of the Missouri river an earning of less than one cent per ton per mile. Now, to handle it, we have to furnish a car of special design, refrigator in character, costing, we will say, 50 per cent. more than an ordinary car. It is heavier. The product has to handled under ice. It moves at stated seasons in large quantities, and the result is we have an empty movement, west-bound, on a large portion of it. Now, the public would say that that is high class freight. They measure it by the price they pay for the oranges in the eastern market. Now, it is a fact, so I am told, that California oranges very frequently are available at a lower price in Chicago and New York, after having paid the rate, than they are at a point on the Pacific coast within 50 or 100 miles of the groves. Now, that rate starts with a rate on the foreign orange, from Messina, if you please. The dried fruit rate starts with the rate on raisins, from Malaga to New York, and these rates are made to place the Pacific coast product before the consumer in the far east at a price he can afford to pay, and to consume to the greatest extent he can. Now, that is the principle underlying the rates, and, accordingly, we have lower rates relatively on Pacific coast products than we have on any other class of traffic that we handle.

Q. Well, all of that is true, but the question that I was getting at—

A. So that all rates are very low, we think,—so consider.

Q. The question I was seeking an answer to is whether you consider your rates on canned goods, dried fruit, hops, hides, and other goods of that kind, remunerative rates?

A. I regard it desirable traffic under the conditions; and there is some remuneration, but not particular remunerative for a carrier.

Q. What is your unit of measure as to the result of transportation of goods? It is what you get out of your carload, isn't it? Isn't that the general unit you use?

A. It is the revenue, yes—the carload revenue and the ton revenue.

Q. That is what I mean. Now, then, did you ever take the trouble to figure out what your average carload revenue is, for lumber, as compared with these other articles that I have mentioned?

A. We have had those figures, yes.

Q. Now, do you think they will come out? Which will produce the greatest revenue to the company, per carload?

A. Per carload?

Q. I mean when it gets to Chicago, Omaha, New York; when it gets out to this country where these products go to?

A. I will illustrate that.

Q. Can't you answer it and then illustrate it?

A. I think the lumber does not yield as good revenue as the other commodities.

Q. Now, you have had that figured; and you are speaking either from guess work or memory.

A. I am speaking based on some illustrations I have in my mind. I will just give you one for illustration.

Q. All right.

A. The lowest commodity rate which occurs to me, which we have from the Pacific coast to the Missouri river on other than lumber, is sugar.

Q. I did not have sugar in my mind at all.

A. Now, sugar yields us 50 cents a hundred; and it is not at all impossible or uncommon to get 80,000 pounds. 60,000 is the common load. Now, we will say 60,000, for illustration. There would be $300 a car. Now, we will consider lumber. I don't suppose your average load on lumber would be more than 27½ tons as a maximum.

Q. Then you are not familiar with the testimony that the railroads put in in this case, as to loading, are you?

A. I don't know how they are loading.

Q. Well, just fix your figures as you want them, as to the loading capacity on your road.

A. I would say offhand that I don't think our lumber averages over 27½ tons per car.

Q. About 54,000 or 55,000 pounds?

A. About 55,000 pounds would be about it. I think that is the way our lumber runs; I would want to verify it.

Q. That is all right. It is close enough, anyhow, for the illustration.

A. So I consider that lumber is a very low return of revenue to the carrier.

Q. Now, take it with dried fruit, wool, hops, in every one of those instances there has to be special cars, has there not? I mean box cars?

A Oh, yes.

Q. Lumber is loaded on any old car, isn't it,—flat cars as well as box cars? There is no selection of equipment?

A. No, sir.

Q. And a carload of lumber is not worth anything like a carload of hops?

A. No.

Q. Nor a carload of salmon?
A. Worth very much less.
Q. Nor a carload of wool?
A. True.
Q. The risk is infinitely greater, isn't it?
A. The value of the article transported is very much greater than it is on lumber.
Q. All of those features, of course, enter into the question of rate, don't they?
A. Yes, they would have to be considered.
Q. You have to consider that?
A. Yes, certainly.
Q. The insurance problem must be considered all the time?
A. Yes.
Q. In the movement of hops and wool and cement and articles of that kind, when you get them on a train, ordinarily speaking, commodities of that kind have to be kept moving, do they not? I mean by that that is the customary course?
A. Continuous movement, yes.
Q. That is not true of lumber, is it? You can send out a lumber car when you want to, can't you?
A. Well, we don't ever intend to—
Q. Well, you don't try to, but—
A. I will answer your question. We do not regard lumber as time freight—
Q. That is what I mean.
A. —to the extent we do salmon, or wool, or the higher priced commodities.
Q. That also enters into the question of rate making, doesn't it?
A. Well, it—
Q. Just a little bit—
A. Well, so remote that you would have to have a spy glass to see it.
Q. You then think that rapidity of movement is of no moment in rate making?
Mr. Dillard: He did not say that at all.
Mr. Teal: Let the witness say what he says.
A. I didn't say that. I think if you would increase the speed of a freight train in order to take care of the commodity, you have got to reckon with that factor; and I may add that we do. We have some commodities on which we have to give faster service; and we do consider that a factor.
Q. In this lumber business, generally speaking, in carloads, the shipper always loads it, doesn't he?

A. He does, yes.

Q. And generally speaking, in carloads, the consignee unloads it, doesn't he?

A. That is the custom.

Q. And the terminal service rendered at either end of the line is extremely limited, isn't it?

A. It is as to the unloading. The terminal service varies, of course, as most of this lumber goes into what we term lumber yards on industrial tracks, which represent quite an outlay to the railroad serving them.

Q. Now, it is generally loaded in the yards of the lumber companies, isn't it, at their mills?

A. Oh, yes.

Q. And you wouldn't say that there was any such terminal service applicable or chargeable to the lumber traffic as there is to the ordinary commodity moving on a railroad; do you? You wouldn't say that?

A. I don't think that the lumber yards at any particular destination would equal the general yard facilities of a railroad; but the peculiarity about lumber—and it is not confined to lumber; it is on coal, if you please, and some other commodities,—you have to have special tracks built to special yards, sometimes over the ground not owned by the carrier, but they get an easement from the party owning it, as a matter of commercial convenience. Now, the railroads have gone to an extreme on that, in expanding in large cities their side tracks, and it often happens that they incur a large expense to get these facilities in, and after they have gotten them it has to be used on what I term the a la carte plan, by competitors coming in and absorbing your switching charges, so that oftentimes you may spend, we will say, ten or fifteen thousand dollars in putting in a side track, and at the end of the year you may have gotten 500 cars at perhaps less than $5 per car revenue, and your road revenue may have been insignificant.

Q. Now, then, in the question of damages,—does much damage arrive from the handling of lumber on railroads—damage claims, I mean?

A. No, sir.

Q. It is very limited, isn't it?

A. It is limited.

Q. Now, on the whole, would you consider lumber a good freight to handle? I don't mean to turn the Union Pacific into a lumber road, but I mean to have your lumber—

A. It is desirable traffic—lumber is.

Q. Now, taking your west bound freight: Do you have any west bound freight that is remunerative?

A. Well, we hope so.

Q. What?

A. Well, our fifth-class rates, or our classification rates.

Q. That is on local business, is it?

A. On business generally. We don't intend to haul any freight for less than cost.

Q. Not even including lumber?

A. Not even including lumber; that is right.

Q. So that you would state that the general run of your rates west bound are all remunerative?

A. We feel that our business is remunerative at the present time. Yes, I will say that, speaking generally, our rates are remunerative.

Q. That is what I wanted to know.

A. We may have some very foolish rates, but the whole body politic is remunerative.

Q. Now, is lumber the commodity carrying, prior to this advance, the lowest rate on your road?

A. I cannot answer that without reference to the figures.

Q. How about coal?

A. My recollection is that our revenue on coal is about 6.2 mills per ton per mile. Of course we don't haul coal anywhere near the distance that we do lumber. Our average haul on coal from the Wyoming mines, our source of supply, would be between 600 and 700 miles, to points in Nebraska; and we have had very little of that in the last few years, because the demand in the west nearer by, for coal, has been such that we have had to virtually turn Nebraska over to other parties who could supply coal. We haven't had enough coal to go around, from our standpoint. But, for the sake of comparison, 6.2 mills, I believe, would be a fair illustration.

Q. Now, the ores carry a lower rate per ton per mile than lumber, don't they?

A. Well, there are some very low rates on ore; I am quite well aware of that.

Q. Do you think they are remunerative?

A. By themselves they are a ballast rate, some of them.

Q. Do you think they are remunerative?

A. Not particularly so.

Q. Those are all east bound—the ores—are they not?

A. East bound, yes.

Q. Have to haul empties for them west bound?

A. No.

Q. What do you haul in the ore cars on the Short Line?

A. We use box cars for ore loading.

Q. And what do you haul up there for the ores over the Oregon Short Line?

A. The movement of ore over the Oregon Short Line is small; it is not heavy. We are not a very heavy ore carrier.

Q. You don't remember the percentage of ores that are handled on the O. R. & N. and Short Line as compared with the balance of their business?

A. No. There is some from the Coeur d'Alene; I don't recall the percentage.

Q. Would you be surprised if I told you that in 1907 your percentage of business on the O. R. & N. Co. from mines was 28.61 per cent. of your whole business, and on the Short Line 52.11 per cent., and on the U. P. 31.95?

A. No.

Mr. Dillard: Are you including coal in that question?

Mr. Teal: Yes. I presume "mines" covers everything of that kind.

The Witness: I may add in that connection the figures I had in my mind in addition to the 6.2 mills, that the Union Pacific tonnage on coal was about 32 per cent. I came within about 5/100 by the guess. And that our revenue on coal was about 11 per cent.

Q. I am speaking of the Short Line; that is the ore carrying road?

A. As to the Short Line I haven't the figures.

Q. But your ore rates are what you would term on a ballast rate?

A. I think so, yes.

Q. Still they are remunerative?

A. Well, there is a lot of consequential business that goes with the ore traffic.

Q. The fact is it is almost impossible to separate business on a railroad, isn't it, and just say what is remunerative and what is unremunerative?

A. It is a difficult problem.

Q. That is what I thought. The Oregon Short Line is a very fine paying road, isn't it?

A. It is a good property.

Q. And a very large part of its business, as is shown by its own reports, is coal and ore, isn't it?

A. Yes.

Q. And another considerable part is carrying lumber, wasn't it?

A. I don't recall the lumber figures but they had quite a lumber traffic.

Q. Now, passing those, do you know of any other rates that have been in effect in the last two or three or four years that were lower than lumber rates,—produced less revenue?

A. I don't recall any.

Q. Are you familiar with the China and Japan rates?—the Asiatic rates?

A. I know something about them.

Q. Were they low rates?

A. Absurdly.

Q. And did they pay the cost of service?

A. Very doubtful, in my mind, whether, all things taken into consideration, the railroads got a dollar back for a dollar spent on that Asiatic traffic; in other words, it is doubtful in my mind if they actually did not increase our expenses without any increase in revenue. We have gone out of the business on a large mileage.

Q. Of course it never was the intention to do anything of that knid, was it—to pay for traffic?

A. No; no.

Q. Now, you remember that in the Spokane case it was testified that these rates paid more than the cost of movement? Do you remember that?

A. I didn't hear that testimony. It did not impress on me.

Q. But those were absurdly low rates?

Mr. Donnelly: Who testified to that, Mr. Teal?

Mr. Teal: Mr.—I was almost going to say the counsel.

Mr. Dillard: Donnelly?

Mr. Holden: If you leave it that way I don't care.

Mr. Teal: No, but I think I will find who testified to it, because that was the claim made, it was argued to the Commissioner, it was testified in the evidence and it appears in the briefs.

Mr. Holden: You don't contend that all that appears in the brief, do you?

The Witness: We don't claim our tariffs are always immaculate.

Q. That is not what I was speaking of. I was speaking of making a comparison between these lumber rates and other rates, so as to arrive at some point of comparison, as to whether or not they were fairly remunerative—your rates.

A. Well, I should compare the Asiatic rates, on the one hand with the free rates, on the other, given to a charity or-

ganization. I think that would be about a fair comparison. Nothing in it, anyway.

Q. Now, I will ask you this: In undertaking to make a rate, do you consider the cost of the road in making the rate?

A. I don't think the average freight man knows how much the road costs.

Q. Do you consider the cost of its replacement?

A. We mentally recognize that a road has to be rebuilt and refurnished every ten years.

Q. No, but I mean when you sit down to make a rate do you consider the capitalization, bonded indebtedness, the cost of replacement?

A. We have it before us the same as you have the stars of night before you, but I don't think we see it all the time during the day time.

Q. Now, I would like to ask you if you agree with this gentleman, one of your traffic managers, connected with your road, on rate making—I will read the questions I asked him, and then will ask you if that is your basis? I asked him, "I will ask you a specific question. Are your rates based on the earnings of your road"—this was Mr. Miller. Mr. Miller said, "No, sir." Are your's? Can you make them?

A. That is not the controlling factor. I would agree with him on that as a general answer.

Q. Then I asked him: "Does the amount that is invested in the road enter into it?" His answer was, "No, sir." How is that with you?

A. I think the amount that is invested in the road does enter into all rates on that road, and if you disregard that factor at the end of the year, you will find yourself bankrupt. So that the answer "No," I take it in that case, means this: If you go in to Mr. Miller and ask him for a rate on canned salmon from Portland to the Dalles, it never occurs to him what the road cost per mile between Portland and the Dalles. Other considerations outweigh it. At the same time he has got to not be unmindful that there is a cost there.

Q. Then I asked this question: "Does the cost of the road enter into it?" He answered that, "No, sir."

A. It does, indirectly.

Q. Now, you take on the U. P. since you have been connected with it. There have been vast improvements in every possible way in its physical condition, which is reflected in operating cost, haven't there?

A. Great improvement.

Q. You carry very much heavier trains now, do you not?
A. We do.
Q. You have very much larger cars?
A. Yes.
Q. Very much heavier loading to the car?
A. Yes.
Q. And very much larger return from a car than you did ten or twelve years ago?
A. Yes.
Q. And the road generally is in a very much better physical condition?
A. It is.
Q. Do those factors enter into whether or not a rate should be raised, advanced or held even?
A. Well, they are all a factor.
Q. Well, I asked Mr. Miller this question on that: "After going over the fact that you carried heavier trains, more tonnage, the locomotive handling more freight, the cost of operation reduced, I asked you if all of those things in rate making do not enter into it at all, as I understand it, and your answer was, 'Generally speaking they do not.' Is that true?" "Mr. Miller: I think that is true, yes." You don't agree with Mr. Miller on that?
A. I agree they have an indirect bearing, although I think the man who makes the rates in answer to the specific inquiry, figures more on commercial conditions.
Q. Now, Mr. Miller is the General Traffic Manager of the O. R. & N. Co. at the western end of the Union Pacific system, isn't he?
A. The General Freight Agent.
Q. Well, he is more than Freight Agent, isn't he?
Mr. Holden: General Freight Agent, he said.
A. General Freight Agent of the O. R. & N.
Q. Does he have anything to do with making rates on the O. R. & N.?
A. Indeed he does.
Q. He makes the rates out there, does he?
A. He does.
Q. So he knows what basis he is making his rates on?
A. Certainly.
Q. Now, do you know of anything within the last five or six or eight years that has put in effect substantial advances in rates on lumber over your road?
A. Any lumber advances? I didn't quite get the question.

Q. I say, do you know of anything that has been done in the way of rate-making or rules respecting the handling of lumber, that has increased the earnings on a carload of lumber?

A. Well, the increase in the car capacity—the larger car—would automatically do that.

Q. Then there has been an increase, and quite a large increase in minimums, has there not, in the last eight or ten years?

A. Yes, that is right.

Q. And that has, in itself, operated to increase pro tanto the earning capacity of the car?

A. That is true.

Q. I understand, then, the reason that you now give for the advance in the lumber rates—you know the advance which is in question here of course—was because of the fact that in your opinion the rate was not sufficiently remunerative, and that owing to changed conditions in lumber production in other sections it could stand a higher rate?

A. Yes, sir.

Q. I suppose you would take substantially the position that was defined by one of the witnesses—

Mr. Dillard: Excuse me. By you in your brief—not by the witness, I think.

Q. I suppose you would take substantially the position that was taken by Mr. Miller, to-wit, that the lumber business was prosperous and it could stand the advance in rates?

A. Well, that is rather a terse hard way of putting it.

Q. Let us mellow it a little bit and maybe we will be at the same conclusion, anyhow. Now you state your way.

A. I believe that these new rates applied to lumber would not, first, restrict the movement; second, that they would yield a fair return to the lumber shipper; third, to the dealer; fourth, that the price would be reasonable, entirely within the limits and ability of the consumer to pay, and that the advance would not create any hardship anywhere upon anybody.

Q. That is the reason of your justification, as you understand it, for the advance on the Union Pacific railroad?

A. That is my judgment.

Q. And you participated in it, and in arriving at this conclusion about the advance—

A. Well, I don't know that I personally had any talk about this. My views have been very pronounced on this subject.

Q. You said you had talked about advancing it with everybody.

A. I said our department. I have had more or less talk about it. But those are my views, and would be considered by me in the consideration of the question.

Q. Did you have anything to do with the installation of this rate? It is quite immaterial what your views are, unless they had some effect.

A. Yes, we were represented at those meetings, and those were the ideas that I intended to inculcate in the minds of our representatives who reported to me.

Q. Now take the 10 cent advance to Denver, from 40 to 50 cents. Does the same justification which you have just recited apply to that advance?

A. Yes.

Q. You think that was right?

A. I do.

Q. And you think a 25 cent advance was not unreasonable?

A. It was not a question of a percentage advance. It was a question of getting a rate not unreasonable in itself, and getting a fair return for the service rendered; not excessive, but a fair return.

Q. Now, boiled down, you do believe that the business of the lumbermen could stand the advance?

A. I do.

Q. And for that reason you put the rate in, didn't you?

A. That was one of the reasons.

Q. And during all this time you were getting more per ton per mile for your lumber shipments than the northern roads were hauling it?

A. I don't know what their rate per ton per mile is, but based on eastern terminals that would be true, our distance being substantially the same as theirs and our rate being higher; but to Denver it might not be true.

Q. Did you make the statement a while ago (I may have misunderstood) that rates had been going down in every direction for the last few years?

A. Yes.

Q. What rates do you refer to, and what years?

A. I have in mind now, for instance, the class scale from what we call eastern terminals—St. Paul, if you please, for the northern lines, and Montana. We were getting a 2.50

scale; we are now getting a 2.25. To Utah we were getting a 2.30 scale from Omaha; we are now getting a 2.05. At points in Nebraska, by legislative action, we have had a reduction in the last two years of 15 per cent.

Q. But that is in the last two years?

A. In the last two years, yes.

Q. But you were referring to conditions before that, which led to the raise in this lumber rate. I am referring now to conditions which existed prior to this advance in the lumber rates. These are all things that have occurred since the Minnesota Commission rates and the Nebraska Commission rates.

A. The general tendency of rates has been downward, all over the country, as you know.

Q. That is one thing I would like to know, because I have seen that disputed so absolutely. When you say that the general tendency of rates has been downward, do you mean that the rate per ton per mile has been decreasing because of decreased rates, or has it been decreasing by longer hauls and different character of products?

A. The rate per ton per mile has decreased from two causes: one is the decrease in rates per se; the other is the increase in the movement of a very low class of tonnage.

Q. Yes, that is what I thought entered into it.

A. And those two factors come together and reduce the average. Now I say that rates have been on the decline. In evidence, why, I would have to submit the average revenue per ton per mile of many of these carriers.

Q. Does that mean anything?

A. Whatever it may mean, it may mean that or it may mean not so much. Now, of course, we look back over the past and we see in our mind's eye the reductions that have obtained. When I first came with the Union Pacific we had 3.30 on first-class from Missouri river to Salt Lake; we had something like $5, I think, on first-class from Missouri river to Montana common points. Those rates have dropped step by step until we now have 2.05 in lieu of 3.30, and 2.25 in lieu of—I think the rate was five and a quarter; that, of course, was several years ago. Now I have in mind the Denver scale. When I first went into the Union Pacific we had a 2.40 scale from Omaha to Denver. That has dropped down by degrees, until now it is a 1.25 scale. So that is what I have in mind when I say that rates gradually have been on the decline in the last few years.

Q. Accepting that as the correct statement, the earnings of your road have grown by leaps and bounds during the same time, have they not?

A. They have grown since eighteen hundred and—

Q. Since the reorganization.

A. Since 1898 we have had an increase in revenue each year, which, of course, has been very gratifying. Prior to that time we had a decrease which was, of course, as you know, very disappointing.

Q. Very disappointing, of course, but the U. P. was not running then as it is now, was it?

A. But the business has grown in the last few years.

Q. Notwithstanding the reductions you speak of, there has been, as I say, a constant increase in the revenue of the companies?

A. The gross revenues, yes.

Q. And likewise the net?

A. Yes.

Q. Now, do you carry much wheat or corn on your roads?

A. We carry most of our wheat in Kansas.

Q. Where do you carry it to?

A. Mostly to Kansas City.

Q. What is the haul on that?

A. From 250 to 350 miles.

Q. And what is your average rate per ton per mile on your wheat?

A. My recollection is we get about 14 cents a hundred—from 14 to 15 cents a hundred. I think $3 a ton would be our average revenue into Kansas City, from the wheat belt, covering 250 to 325 miles.

Q. And what is the rate per ton per mile?

A. It is about a cent per ton per mile.

Q. And how about your corn through Nebraska?

A. Our corn in Nebraska would run on about the same basis, I think. I am speaking now entirely from memory. We have those figures which I could get, of course, by looking them up.

Q. Those are short hauls compared with this lumber haul?

A. Yes, it is short haul compared with that.

By Mr. Walter:

Q. The increase in the freight rates on lumber meant just that much added to net revenue, didn't it?

A. I think substantially so.

Q. It cost no more to do the business on the advanced rate than on the old rate?

A. I think that is a correct assumption.

Q. So that the increase of 25 per cent. in the Denver rate meant a good deal more than 25 per cent. of the net revenue on the lumber business?

A. Yes.

Q. And the increase in the St. Paul and Omaha rate meant much more than 20 per cent. increase in the net revenue?

A. Yes.

Mr. Holden: There wasn't any 20 per cent. increase in the Omaha rate, that is the only difficulty about that.

Mr. Walter: The increase from 50 to 60 cents would be an increase of 20 per cent., wouldn't it?

The Witness: Yes.

Q. And that meant much more than a 20 per cent. addition to your net revenue on your lumber business?

A. Yes.

Mr. Holden: The increase to Omaha was not to 60 cents; it was 55 cents. There was a 12 1/2 per cent. increase to the Missouri river.

The Witness: Your idea is that the increase followed the net?

Mr. Walter: Yes.

The Witness: I admit it.

Q. Now, if that increase had been taken in all of your business, it would have meant a very great increase in your net revenue?

A. Certainly.

Q. And you are already able to pay substantial dividends and all your interest charges?

A. We are at the present time.

Q. Now, in these conferences in which the increased rates were determined upon, was the amount of the increase that which was suggested by your line, or did you suggest a greater increase?

A. I don't know.

Q. Did anybody suggest a greater increase than that which was put in?

A. I don't know.

Q. You have testified in a number of rate cases, haven't you, Mr. Munroe?

A. I have.

Q. Before State Commissioners?
A. I have.
Q. The Interstate Commerce Commission?
A. Yes.
Q. And before courts and masters?
A. Yes.
Q. In opposition to reduced rates?
A. Yes.
Q. In any case did you find that the proposed reduction was just?
A. Yes.
Q. The rates complained of were unreasonably high in your opinion?
A. Yes.
Mr. Dillard: Which rates were those? I didn't hear that.
Mr. Walter: The rates complained of before commissions and before courts.
Q. In your testimony did you find that those rates—any of them—were too high?
A. Yes.
Q. In what particular cases?
A. One of the last cases in which I testified was a case involving rates on coal from Southern Colorado to points in Kansas, where we had no joint through traffic, where the rates were based on a local south and a proportional east of Denver. We stated at that hearing that we thought there was merit in the contention and that the rates should be adjusted, and we agreed at that very hearing with the other line interested to reduce them, and so announced our conclusion.
Q. Now, any other case?
A. Well, that is the most recent one. We do not pretend to say, as I remarked before, that our rates are immaculate. We make mistakes the same as anybody else—sometimes I think a great many of them, but wherever we do make a mistake we are just as desirous of correcting it as anybody else. We want to have our rates proper and just. We are not fighting the public—we are trying to cooperate with them.
Q. Now, Mr. Munroe, any other case besides these coal rates that you can think of, where rates were challenged, where you in your testimony said that the rates you had in effect were unjust and unreasonably high?
A. Well, that is the principal one that is now resting in my mind. I don't recall others at this moment. But I may add that as a result of various hearings we have made various changes, and without waiting for an order.

Q. Where you have felt reasonably certain that an order would ensue, or circumstances of that sort were shown, you did make some reduction?

A. Well, we have not entirely on account of the coming order, but because we felt that the changes in themselves should be made on the merits.

Q. Before those complaints were made, requests had been made to you to reduce the rates, hadn't they?

A. Yes.

Q. And you failed to reduce them on those requests, and as a result formal complaints were instituted?

A. Yes.

Q. Now, the making of a freight rate is largely a matter of judgment, isn't it?

A. It is.

Q. A matter of opinion?

A. Yes.

Q. There is no method by which you can determine by any mathematical system, any accurate system, what a rate should be, to be just to the public and to the carrier and to all concerned?

A. There is no fixed rule.

Q. And the rates that were increased were made by the carriers because they wanted more revenue?

A. Yes.

Q. You don't pretend to say, Mr. Munroe, that your judgment as to the reasonableness of a rate is exact?

A. Oh, no; I am not infallible.

Q. And when you say that the rates you had increased in November, 1907, were just and reasonable rates, you were speaking from your standpoint and in your opinion only?

A. That is all.

Q. Is it your theory that by reason of depletion of one source of production, the consequent increased demand for one article to be transported, you have the right to put such a rate upon it is will permit its free movement to the market?

A. I think so, yes. I think a common carrier has the right which is accorded every citizen—to share in the prosperity. I cannot convince myself that it is American, that it is just, that it is proper, because an aggregation of American citizens have associated themselves into a corporation, that they should be denied a reasonable share in the prosperity. I cannot convince myself that if it is right for these lumber dealers in the south to get $9 per ton increase for the sale of their commodity, that we ought to be held rigidly down to our rate. I

recognize that they are entitled to a fair increase under commercial conditions, and I contend that the sale of transportation is a commercial transaction, and that we are alike entitled to a fair share—no more, and should not be called upon to accept less.

Q. Now, you advance the proposition that all profits which accrue from a business which involves transportation of commodity produced, although those profits may largely result from business industry, business acumen, the sagacity of the lumbermen, for example, new methods of making lumber,—that because of the increased profit, the increased demand for lumber, you have a right to share in that profit?

A. I would not put it that way. I regard the common carrier as a partner—the intermediate link between the producer and the consumer, and that all three should work together for the best interests, and what helps one naturally helps the other; and the minute we spend more money in the building up of our property, then, automatically, the consignor and consignee are benefited, and should be. The public is the one to get the benefit of these improvements. We have a right to share in it. That is all I contend.

Q. Without regard to whether the rates before the increase, in profits, were sufficient to pay you for the service and give you a fair return on the property invested?

A. If the rates as in effect were properly remunerative, there might be some question about it; but if they were not, to my mind there would be absolutely no question whatsoever.

Q. Well, you do know that as a result of this increased rate, lumber mills closed down in the northwest?

A. No, sir,—and I don't believe it.

Q. And that there was stagnation in the trade?

A. I believe it was due to causes entirely foreign to the rate.

Q. Well, it did happen coincident with the increase?

A. It was a coincidence.

Q. At substantially the same identical period?

A. About the same time, yes. It also happened that the panic occurred on October 28—three days before. I contend that the stagnation, so-called, in the lumber business was inevitable; would have occurred perfectly regardless of the freight rate; did occur from causes natural, and that no freight rate could have changed it.

Q. Did you see that coming in the lumber industry?

A. I am sorry to say that I did not see the panic coming as clearly as some did, but I did see it very plainly on October 28th when I couldn't get a dollar.

By Mr. Teal:

Q. You said that stagnation in the lumber business was inevitable. Why so? We would like to know that.

A. Because I believe lumber had gotten top heavy in price. It had gotten to a point where the consumers in our territory believed it was top heavy. They did not dare to stock up. There was a general apprehension that something was coming, and we were reaching the climax, and we all know the climax did come on October 28th.

Q. And notwithstanding that you added from 12½ to 25 per cent. increase to the rate on lumber?

Mr. Holden: That is not a fair statement of the record. The tariff was filed more than a month before that time.

Mr. Dillard: The witness will take care of himself. Go ahead and answer, Mr. Munroe.

The Witness: The filing of the tariff had nothing at all to do with that question. We were all looking for something that we didn't want to find, and you know it came like a thunderbolt out of a clear sky, and the intervening Sunday is the only thing that saved us from a very complete panic.

Q. Now let us get an answer to my question, and you can explain afterwards. You say that during the year 1907 consumers felt that the price of lumber was too high—it was top heavy?

A. Yes.

Q. And yet in the face of that you added from 12½ per cent. to 25 per cent. to the total freight charges on lumber going to the consumer? That is true, isn't it?

A. We—

Q. Is that true or not?

A. I will say yes, it is true.

Mr. Holden: Now proceed, Mr. Munroe.

The Witness: And furthermore, that being true, we did not treat anybody unjustly, and these causes would have occurred entirely foreign to any action taken pro or con on the freight rate—just as I believe that the price of wheat today is too high. We had a collapse yesterday of 4 cents, and we are apt to have another one any minute. In other words, we cannot regulate our action on freight rates by our surmises of a coming panic.

By Mr. Teal:

Q. In connection with these Asiatic rates, you remember you testified as to their remunerative character?

A. Yes.

Q. When were those rates taken out?

A. I don't recall the date, but some time since.

Q. In 1908, wasn't it?

A. I think so.

Q. Why were they taken out?

A. The Interstate Commerce Commission made a ruling that the import or inland proportions should be published, as I understand it. They would naturally have more or less bearing, and were already beginning to have, on our domestic traffic. But I think they, naturally, were drawn out by reason of one of the orders of the Commission, following that.

Q. Then, the reason those rates were taken out was because the Commission ordered certain publicity which might affect domestic rates?

A. That was one of the reasons. I may add that I think it is neecssary for the Commission to make some announcements now and then, in order to free ourselves from some of these rates. For illustration, a 2-cent rate from New York to Galveston is so absurd in itself that nobody would contend for it, and yet you might find a carrier who, for reasons of his own, wants to keep it in, and thus menace the whole situation.

Q. Those rates had been in effect for many years?

A. Yes, sir.

Q. And were not taken out until the Commission issued its order?

A. No.

Q. And they were taken out for the reason that they were published over the country?

A. That is true, certainly. I think so.

By Mr. Wimbish:

Q. Mr. Munroe, I understood you to say that you think the carriers and the public should cooperate; that in a sense they are partners?

A. Yes.

Q. And that if the particular industry or trade becomes prosperous, that up to the limit of reasonableness you are entitled to share in that prosperity?

A. Yes.

Q. Do you think that carriers should come in and share the burdens of the shipper in times of adversity?

A. I think they do.

Q. You think they should do so?
A. I think they do do so.
Q. You advanced the rates on lumber, among other reasons given by you, because you thought the industry was prosperous and could bear the advance. Now, it happened that about the time the advance went into effect, the panic came and the industry became very much demoralized?
A. Yes.
Q. Did you reduce your rates in view of that situation?
A. No.
Q. You put your advance in, then, on a theory which you found to be unjust in fact, and yet you have never corrected that by taking off the advance?
A. I think to have reduced the rates on lumber on account of the panic would have been a crime; it would have been equivalent to suicide for the carriers, and would have injured the industry more than it would have benefited it.
Q. You were speaking of Chicago as having been, in years past, the great lumber market, and you mentioned the Chicago fire and the rebuilding of the city as one of those causes.
A. Yes.
Q. When was the Chicago fire?
A. In 1871.
Q. Did any southern lumber move into Chicago as early as immediately following the fire?
A. I was not living in this part of the country at that time, but I assume that it did, and my assumption is predicated on this: that in my old New England home, in the 1870's Georgia pine was a staple. Now, if that were true along the Atlantic coast, why, I suppose that nothing was too good for Chicago, and they probably got some of that Georgia pine. It was not so large in volume, I appreciate.
Q. Don't you know that the New England States are reached by the Georgia pine by water transportation, and don't you know that for a long number of years that was not only the chief but the principal domestic market, almost the sole domestic market, for Georgia and Florida pine, and that it had to move into Chicago?
A. No, I did not know that.
Q. You did not know it to be a fact that, beginning in 1893, the rates from Georgia into this territory were reduced in successive steps until they reached the point on which the lumber was moved, and that beginning practically in 1893 was the movement of southeastern lumber into this market?

A. I am not familiar with the situation from the southeast in here.

Q. You don't know, then, that the movement instead of decreasing, had continuously increased until the panic of 1907 demoralized conditions?

A. I am not familiar with the movement in the southeast.

Mr. Dillard: I want to understand you there. Do you mean to say that Georgia pine moves in any considerable quantities to Chicago now?

Mr. Wimbish: I will get to that.

Mr. Dillard: Well, I just wanted to understand your question.

Mr. Wimbish: You will understand it before I get through.

Mr. Dillard: All right.

Q. Then, you were testifying upon the assumption, when you stated that in years past more lumber moved from the southeast to Chicago than now moves—

A. I don't think I stated that. I said more or less lumber. I am not familiar—I do not feel competent to testify as to the movement of lumber from Florida and Georgia to Chicago.

Q. Well, do you know it to be a fact that the lumber maving from the southeast into Chicago and this territory was and is largely confined to car material—stuff of that kind?

A. No, I am not familiar with that.

Q. And there are as many car factories here now as then; that is, there is more demand for that grade of lumber?

No answer.

Q. Coming now to a territory nearer Chicago and nearer Omaha, you spoke of the lessening of the yellow pine competition at Omaha and in Nebraska and Kansas, and in regard to one of those places you spoke of the export trade. Do you know the extent of the export of lumber from the south—and by the south I mean Mississippi, Louisiana and Texas?

Mr. Dillard: No, he didn't say as to that.

Q. What did you mean by speaking of the export trade?

A. A few weeks ago I found at a point on the Union Pacific that we were not doing our share of the lumber business, and having a natural interest in getting the long haul, having the money spent by the consumer in Nebraska going to the shipper in Oregon, if you please, I took up negotiations, and got the names of a number of dealers in Oregon and Idaho, and possibly in Washington. I said, can't you manage to come down here and sell this lumber and take a fair share of the trade. The answer I received was that at that time they were

having a very nice demand for lumber of that grade for export, which netted them more money f. o. b. cars Portland than these Nebraska shipments would allow, and until they filled the export trade at the higher figures, why, they would hardly be in shape to give us much attention. That was the idea of it.

Q. Then, you did not mean to say that the export trade affected the supply of southern lumber available to come into—

A. No, my export remark was entirely at the Pacific Northwest.

Q. Then, I misunderstood you. Do you know what proportion of the cut of yellow pine in Mississippi, Louisiana, and Texas, comes into Chicago and points west of Chicago?

A. I do not.

Q. Do you know what the yellow pine lumber cut was for the year 1907?

A. I do not recall it, no.

Q. Do you know of your own knowledge, Mr. Munroe, that there is any lessening of the competition of yellow pine in these western markets, and by that I mean Kansas and Nebraska, taking Omaha as the base?

A. My information comes from lumber dealers and is to the general effect that the western lumber is coming in gradually, more and more, into Nebraska and into Missouri river, particularly Nebraska, and that it is only such cases as the export one to which I referred that is retarding its movement east bound, and the Nebraska dealers generally feel that it is only a question of time when they will get a great deal more lumber from the west than they have heretofore been receiving. That is the idea I meant to convey.

Q. Do you know that lumber is now abnormally low?

A. I understand it is regarded very low at present.

Q. Do you know the conditions of the lumber manufacturers in the south?

A. I have heard that many of the mills have closed up temporarily.

Mr. Teal: Any in the west?

The Witness: I have not heard so much about the west recently, although I did hear about the time of the panic that a number of the mills closed.

Q. Mr. Munroe, how would you make a rate on lumber from Portland to Omaha, if the market conditions at Omaha were such as to give you practically free rein? What rate would you make on lumber?

A. A free rate?

Q. A free rein; if the price there were sufficient to justify any rate, what rate would you make as a fair and reasonable rate from Portland to Omaha?

A. Well, I should consider the conditions at Omaha; I would be governed somewhat by the volume of business in sight, the various points of supply; I would get in touch with the dealers there, get such information as I could, and I am inclined to think I should make a rate of about 60 cents a hundred as a reasonable besis from the North Pacific coast, Portland, because I would know when I made the rate from Portland that I would automatically make it from Willamette Valley points. And I am free to say I would be influenced somewhat by the fact that these other points of supply would not represent 60 cents for the east of Portland, but that is an off-hand statement in answer to an off-hand question.

Q. I wanted to know how you would arrive at making a reasonable rate, if competition at the point of destination should be eliminated. In other words, if the yellow pine cut had not spoiled the yellow pine forests, white pine no longer being a competitor.

A. I should arrive at 60 cents, and I would be influenced more or less by comparison. There would flash up before me the canned goods rate, say of 75 or 80 cents, and the Pacific coast commodities in general, and I would recognize that lumber was a heavy commodity, rough, attended with a minimum loss as to damage, and that if you got it too high you would retard building and hold down the movement. My object would be to get the maximum movement at a reasonable rate, but I would not want to do anything to unduly curtail the movement. I would want the business rather than the tariff; that is, I would not want a paper tariff, a dead-letter tariff.

Q. In other words, then, you would make a rate as high as the traffic would bear and move freely?

A. I would make a rate no higher than the traffic would bear. That is an expression often misunderstood, often misquoted, and generally misinterpreted. I do not believe in making a rate all the traffic will bear. I think the man who is at the other end, who ships and who is the consumer, is entitled to consideration; but you ought never to make a rate more than the traffic will bear.

Q. That is suicidal. Traffic will not move under that rate?

A. You cannot make a rate that will absorb into the cof-

fers of the railroad all of the profits of the transaction. The shipper and the consignee must have something.

Q. And is it a matter of intuition as to what point you will stop in making the rate?

A. Well, intuition has its bearing on that. That is a rather sensitive word with me, you know.

Q. Have you any other standard of test except your intuition or your judgment?

A. Well, I want you to understand this word "intuition." In one of the Denver cases I testified that "instinct" is one of the factors in the mind of a freight man in making a rate. Chairman Prouty, who was chairman at that time, at the hearing, questioned the propriety of the word and suggested "intuition." So I have heard "intuition" off and on ever since.

Q. Well, I desire to beg your pardon; I did not know that I was dealing in personalities.

A. But I made my comparison to convince the chairman, and I would like you to have it. I said a man goes up to the bank teller with a roll of bills, to make a deposit. The teller receives those bills, he picks them over, and instantly he throws out one. He knows it is counterfeit. He cannot tell you why or in what respect, but he says, "It's counterfeit." The glass is put on it and his impression is confirmed. Now you go to a freight man; you get a rate; he knows it is counterfeit. You go to a doctor, he takes the pulse, he knows it is wrong, and he makes his examination. Now that is what I mean by making that remark.

Q. Do I understand you to say that is the way in which you make rates or judge of the reasonableness of rates?

A. That is one of the factors which I keep in my mind.

Q. What is the rate per ton per mile on lumber from Portland or common points to Omaha?

A. 45 cents—substantially 5 mills.

Q. What is the average rate per ton per mile of all the lumber traffic on the Union Pacific?

A. I cannot tell you from memory, without referring.

Q. Can you get me that?

A. Yes.

Q. I would like to have that.

Mr. Dillard: What is that?

Mr. Wimbish: The average rate per ton per mile on all of the lumber traffic of the Union Pacific.

Mr. Dillard: Do you mean the Union Pacific alone or the Union Pacific, the O. R. & N. and O. S. L. combined?

Mr. Wimbish: I mean the Union Pacific and its related lines.

Q. What is the distance from Omaha to Portland?

A. Substantially 1800 miles.

Q. Did I understand you to say that you regarded the rate applied per ton per mile for that length of haul on lumber, a low rate?

A. Yes.

Q. You were speaking of the injustice of some comparisons made by Mr. Anderson, I believe, between the rate per ton per mile from points in Georgia to Chicago and between points in the west. You would regard Omaha as your gateway to the east, would you not?

A. Yes.

Q. It is a fair market for consumption and distribution of lumber that you haul to Omaha and beyond?

A. Yes.

Q. Now, Cairo would be a similar gateway for the southern lumber, would it not, distributing it to Chicago and St. Louis and the northwest; so regarded by the railway men, is it not?

A. Well, I am not familiar with that situation. I don't know anything about that.

Q. Well, I will say that it is the base point. Do you know what is the rate per ton per mile on lumber from, say, Lumber City, Georgia, and other points on the Southern Railway between Macon and Brunswick, to Cairo proper and beyond—a haul, I think, of about six or seven hundred miles?

A. I am not sure as to my mileage. No, I do not.

Q. If you were told it was less than four mills—3 1/2 or 4 mills per ton mile, would you regard that as a low rate?

A. Very.

Q. How do you regard it as compared to your rate of 5 mills per ton mile to Omaha?

A. I have never been over that property and I could not make any intelligent answer without familiarizing myself with the conditions, and I know absolutely nothing of them, but my impression would be this. My first thought would be: No wonder that the Southern Railway is not a better financial proposition than it is—no wonder, if they have got very much of this 3 1/2-mill business, that they are having their troubles.

Q. How about the Louisville and Nashville?

A. The Louisville & Nashville is a more prosperous company, and if they were making it my impression would be that some other class of traffic is paying for it. I don't know so much about the Louisville & Nashville, but I don't believe the Louisville & Nashville can operate for 3½ mills per ton per mile.

Q. On all of its traffic?

A. They cannot do anywhere near that, for that matter; and I would say that lumber was not contributing its fair measure. It may be all they can get—they may regard it as ballast—there is some of that which we have to do—but not a fair rate.

By Mr. Walter:

Q. Mr. Munroe, I just want to ask a few questions. In making your rates for the Union Pacific you use your instinct for the carrier?

A. Not solely.

Q. When the Commission makes rates, for whom does it operate, whose interest does it consider?

Mr. Dillard: I think that is purely a legal question, and one that he may not even know. If you want an admission, I will say that they consider the public and the railways both, if you want it that way.

Mr. Walter: I just wanted to get Mr. Munroe's idea.

Mr. Dillard: Theoretically, certainly.

The Witness: We have always felt that the Commission was a body created to be fair alike to the carrier as well as to the shipper. Sometimes we have thought that their vision became blunted after they had seen the shipper, and we were so far in the rear as not to be visible. But we have regarded it as not of intent. I think the Commission want to do fairly by both parties, but I think they are a little bit leading towards the—

Q. Do you think they make rates by instinct?

A. I don't know how they make their rates.

(A recess was here taken until 2:00 o'clock P. M., at which time the witness was recalled and his examination was resumed as follows.)

By Mr. Dillard:

Q. Mr. Munroe, you were asked with regard to the conditions under which the Union Pacific lines could handle traffic now and the conditions under which they could formerly handle traffic, and stated that they were now handling traffic cheaper than formerly. Has not it been necessary to make a

very large capital expenditure in order to bring that about?

A. I don't recall having said that they were handling it cheaper per unit. They are handling in cars of very much greater capacity, more tons per car, more cars per train, and the elimination of grades, curvature and the shortening of the line the putting in of tunnels, all very expensive improvements, which are showing their effect in that way.

Q. That has called forth, in the first place, a large expenditure of money, has it not?

A. Very large.

Q. This good management has called forth also the expenditure of business judgment and sagacity on the part of the owners and managers of the road, has it not?

A. Yes.

Q. But according to Mr. Walter's theory, while that sagacity and good judgment must be left to the lumber men as their sole property for the purpose of increasing larger profits, his insistence is that so far as the railroads are concerned the more of that you show the less your rates ought to be: didn't it seem so to you from his questions?

Mr. Wimbish: I would like to ask if this is an argument or an examination of the witness?

Mr. Dillard: Yes, in reply to Mr. Walter's argument, that is all,—purely an argument.

A. Well, I thought he was trying to absorb for the public the benefits of the expenditures.

Q. Can you understand any good reason why the lumber men should reap the rewards of his business sagacity and good judgment and that the only reward the railroad men should get from it would be to have rates pushed down all the time?

A. Well, I felt that as it was a partnership property, the improvements on the railroad ought and undoubtedly would stimulate improvements in the manufacture and sale of lumber, and we would all share relatively and fairly alike and the improvements are plainly to the benefit of the public so far as they increase the efficiency in the operation of the railroad. And they do that without any question.

Q. Mr. Walter also asked you if you ever remembered testifying at any rate hearings that rates were higher than they ought to be and should be reduced. You instanced at least one case, but what ordinarily happens before these applications for reduction ever get to a hearing before the Commission at all; when you are approached by people, claiming that a rate is too high, what course do you pursue?

A. Well, I have endeavored to look at the proposition from the standpoint of the shipper as well as from our own standpoint and following lines of cooperation to work out with him if we can, then and there, the solution of the problem. I might instance here that we had applications for reduced rates on coal before the Denver hearing was had, but there were differences obtaining between the various roads composing the through route, which, notwithstanding our efforts, it had been impossible to reconcile. That brought out the hearing. The hearing resulted in a further consideration of the differences and we got together. Now, if that had been a case on our own railroad there never would have been the hearing, but we had a third party entirely foreign to us in interest as far as ownership is concerned.

Q. Isn't it a matter of fact that prior to any hearing or threat in any way of the hearing, that from similar points of origin you had established rates that were perfectly satisfactory?

A. It is.

Q. And it was only by reason of these difficulties that you have referred to, that the hearing was had at all in the case in which you testified?

A. It was.

Q. In the great majority of cases, where complaint is made, isn't it true that there is either a readjustment of the rate or the complainant is convinced that his complaint is not well founded, so that comparatively few of the matters get to hearing at all?

A. That is right.

Q. Then, the bulk of the cases that get to hearing—the great majority of them—are those in which you have felt that your rates were right and ought not to be reduced?

A. Yes.

Q. In the bulk of the cases?

A. Yes. I may add here: for instance, one of the loudest complaints we have today and which has resulted in an order from the Commission reducing the scale, started with the man with whom rate reductions is a fad—not a shipper. He proclaims on general principles that rates are too high, makes the complaint, get the hearing, and the Commission's decision follows. In that very case the largest shippers involved have petitioned their senators even, at Washington, to file the protest of the community against the order of the Commission as promulgated. I merely mention that to illustrate that,

given an order by the Commission, it does not always follow that the complaint was made by interested parties.

Q. While it is very true, then, that the Commission does endeavor to be fair and does endeavor to take care (within proper limits) of the rights and interest of the public, it does not follow that in all instances they give such decisions as the public approves—the interested public—does it?

A. It does not.

Q. You stated that you did not claim to infallibility in the making of rates. Do you know any man who is infallible in the making of them?

A. No.

Q. Isn't it a very hard and difficult problem?

A. Very.

Q. Now, Mr. Teal, in questioning you with regard to the testimony of Mr. Miller and eliciting the answers which you gave, got your theory of rate making. You used an expression there which I think is illustrative, and very fairly so, that in making the rates it would be something like the stars in the night; you would always know they were shining but not have them constantly before your eyes or in your mind in the daylight. Now, if a man comes to you to make a rate on any article, you do not consciously stop and consider how much the road cost do you?

A. No.

Q. Nor how much it would take to replace it?

A. No.

Q. Nor what is the cost of service?

A. No.

Q. But all of those matters in a general way lie back of any action that you may take?

A. They do.

Q. So that in one sense they are not considered and in another sense they are?

A. That is true.

Q. You were also asked, Mr. Munroe, with regard to the putting up of the lumber rate, the increase in 1907. Do you remember how early this matter was first agitated in 1907?

A. Why, very early in the year; I don't recall the month.

Q. It was contemplated at first that the rates would be put in as early as the first of May, was it not?

A. Somewhere about there. I know it was months and months before—in fact, I think it was considered in 1906.

Q. The tariffs were prepared and the rate determined on before you knew there would be any panic?

A. Yes.

Q. And the tariff, possibly, even published?

A. I don't remember as to that.

Q. You referred to the fact that the lumber prices had at that time gotten to be exceedingly high, so high that you thought they were top heavy, and that there would have to be a tumble or a fall in those prices. Mr. Wimbish asked you whether or not, anticipating that there would be a lowering of prices, you thought it was fair to increase your rate. Had those prices reached a point which seemed to you at the time to be above normal?

A. I judge so, based on information as promulgated from time to time by the dealers.

Q. If then, they should be reduced to what would be a fair and normal price, as you anticipated, would that be any reason why you should not have raised a rate that you had already esteemed low?

A. It would not.

Q. Counsel for defendant also seemed to be vastly interested in the consumer. If those prices were at a very high rate and stumpage had gone up and up until it was at an exceedingly high rate, would the adjustment of the freight rate on a reasonable basis, of necessity, or indeed likely, in any way have interfered with the price to the consumer?

A. I think not.

Q. In your opinion would it have interfered in any way with a reasonable and fair profit on the part of the manufacturer?

A. It would not.

Q. Some questions were also put to you with regard to ladings and minima. Is it not a fact that minima are often established at weights quite a deal smaller than what the regular lading is? In other words, don't you often load beyond what the minima are?

A. Oh, yes, we do. We frequently provide in a tariff, for instance, at 60,000-pound minimum, but not in excess of the market capacity of the car. That is done simply to make available for transportation, cars of less than 60,000-pounds capacity that may be at the shipping point; but the tendency is to advance the minimum weights to correspond with the increased carrying capacity of the new equipment. There are no 40,000-pound cars made today. It would be regarded an extravagance to build them.

Q. I think I did not quite put my question clearly. Where a minimum is established at 30,000 pounds, as, for instance,

salmon, isn't it a fact that the lading is frequently in excess of the established minimum?

A. It is.

Q. In determining, then, the revenue which is realized from any car, the fair way of the determination would be to find what was the average loading of the car and not what was the tariff minimum?

A. That is true.

Q. I find that Mr. Teal in some of his comparisons took for the minimum weight of lumber 60,000 pounds. That minimum is established only on certain classes of cars, isn't it?

A. I think so.

Q. And, as nearly as you could remember it, your loading averaged something like 55,000 pounds?

A. Yes.

Q. Now, for instance, you take the minimum established on hops—it is 15,000 pounds, I believe—which was used by Mr. Teal in his comparison. I see, as a matter of fact, that hops often load 30, canned goods 40, dried fruits 40, wool 30, and green hides 30.

Mr. Walter: Are you testifying?

Mr. Dillard: Am I testifying?

Mr. Walter: Yes, as to the amount?

Mr. Dillard: I am stating what was given in evidence.

Mr. Walter: Oh, I thought that was a different matter.

Mr. Dillard: No, those are matters which were given in evidence.

Q. And those ladings are illustrative of what may happen in a car in excess of the minima, are they not?

A. They are.

Q. Now, if there is a less load to the single car, it would follow naturally that there can be more cars hauled in the train, would it not? That is, if you have a product which has a minimum or is loaded only to 20,000 pounds, and other products which are loaded to 60,000 pounds, the engine can draw more products of the lesser weight than—

A. Can draw more cars, you mean?

Q. Can draw more cars, I mean, of the lower weight than of the heavier weight, of necessity?

A. Yes, barring atmospheric conditions.

Q. Yes; I mean reduced, of course, to a theoretically perfect condition. You were also question with regard to the hauling of export and import traffic, and stated that in your opinion you doubted if it paid anything even beyond the cost of

service. So far as you know was that not recognized by all of our traffic men as being carried at an exceedingly low rate?

A. It was. I referred especially to the outward-bound movement to the Orient.

Q. I understand. And even then it was carried somewhat in the nature of a surplus product, was it not?

A. Practically all of it.

Q. And it was desired to build up, if it could be, an Oriental trade?

A. Yes.

Q. Was that not true?

A. Yes.

Q. Those rates were recognized, however, to use your phrase, as absurdly low. After the Commission announced its hearing in the Baltic Pool case, you stated they were removed. Is it not true that they were recognized as so absurdly low that it was thought it would be exceedingly unwise to establish them as a regular published rate?

A. It was.

Q. Before this time, as far as the in-bound rates were concerned, they were made at least for a long time on short notice, were they not?

A. They were.

Q. Under the ruling of the Commission, that method had to be abandoned and you had to publish a fixed, established rate, a rigid rate, for 30 days at any rate, in the tariff, and you thought that could not wisely be done at all?

A. Impracticable. The through rates necessary on the Asiatic in-bound were largely a matter of action in Hongkong. There would be two ships on the berth there, say one to go by Suez, one to go by the Canadian Pacific, or by any of the American boats, and it very frequently happened that the same commodity received today might take one rate and a condition might change it tomorrow—so that the same ship would have the same kind of freight at different rates as against the Suez competition, and it was so changeable that there was no rule of tariff that we could make fit that condition.

Q. You were endeavoring then to meet existing conditions and to built up a merchant marine?

A. That was the object.

Q. When the Commission found it necessary to decide that that was not permissible under the law—and I am not in any way criticising the decision at all,—when they found that that was necessary and that that traffic must occupy the same posi-

tion as to tariffs that other traffic occupied, you found it necessary to abandon it?

A. Yes, sir.

By Mr. Holden:

Q. Mr. Munroe, what are the competitive features of import and export rates?

A. Import rates—the most important article in-bound is tea. The highest rate we have been able to get as an average is about a cent and a quarter a pound, from what we call the Asiatic ports of call—Hongkong.

Q. Explain why that was the highest rate and what were the reasons which—

A. Suez competition.

Q. Explain just what you mean by that.

A. There is very much larger traffic by sea between the Orient and the Continent of Europe and the United Kingdom, relatively, than there is to this country across the Pacific, and the ships are on berth there all the time. The competition is very intense between themselves from causes entirely foreign to any American carriers; and if there was no Pacific Ocean, and if there was no railroad from the Pacific coast east-bound, why, we doubtless would have more or less of that extreme competition—something that is entirely uncontrolled and extreme. That applied as to the Orient. And we find that the same thing exists outward-bound. You take a ship on berth in New York that is scheduled for Hongkong; she advertises her date of sailing, and she finds today that she is short, we will say, 500 tons, and she is going to sail next week. She will take that 500 tons wherever she can find it, at any rate necessary to fill out; that is to say, they have their own conditions, they create an emergency which they fill out with, and do not have to report to anybody, do not have to ask anybody; they are free agents to do as they please. That is the kind of competition the rail lines meet in trying to handle overland traffic which can move wholly by water between the points in this country and the points in Asia.

Q. Now, taking that as a concrete case: here is a ship in berth in New York Harbor, with space for 500 tons. Now, that is a competitive shipment between that ship or other ships moving wholly by water to an Oriental port, and the American rail lines loading across the Continent to the Pacific coast and there trans-ship to some Oriental port?

A. Yes.

Q. Now, is it not a fact well understood that the ship's rates

in the New York ports, under those conditions, vary not only from day to day but at times from hour to hour?

A. That is true.

Q. And that one lot may be booked for shipment at one rate, and the next day the same kind of commodity may be booked at a wholly different rate, lower or higher as conditions might bring it about—

A. Yes.

Q.—in the mind of the master of the ship as to what rate he would make?

A. Yes.

Q. So that the agent of the rail lines seeking to secure those shipments, has constantly to meet in his rates the condition which he is confronted with by the ship's rates which I have referred to?

A. Yes.

Q. And that illustrates completely the character of competition that has affected these transcontinental export and import rates?

A. Yes.

Q. And the impossibility of fixing them by any published scale that can only be changed on a certain number of days' public notice, filed with the Commissioner at Washington and posted at railroad stations?

A. Yes.

Q. And that the interpretation of the law which has been put upon it, necessarily, perhaps, by the Commission, has practically forced the American railroads out of that business?

A. Yes.

Q. Now, in engaging in that import and export traffic at the kind of rates you have been referring to, was it not the purpose of the transcontinental lines, by beginning on the very low basis, to make the effort to build up a respectable and constantly growing tonnage in and out of the country from the Asiatic country?

A. Yes.

Q. In the hope that, as conditions grew, the rates might be ultimately brought to a respectable level?

A. Yes.

Q. And that hope has been disappointed?

A. Yes.

Q. Now, just one other question on that subject. You spoke about import business, for instance, from Hongkong, but the rate is made practically at Hongkong. It is determined by what will influence the traffic by a vessel crossing the Pacific to a Pacific port in this country and then rail movement east-

ward as against Asia from Hongkong all by water to the Atlantic coast, for instance; and has it not been the fact that the man at Hongkong has had to determine what the rate would be if he got the business for the Pacific coast port and that the railroad connecting with the Pacific port has had to take whatever it could get arising out of those conditions existing at Hongkong?

Q. Yes; we had an understanding for divisions and the rate making power was vested with the Hongkong committee. We did not know what the rates were until the ship arrived at San Francisco or Portland or Seattle, as the case might be. We would have varying rates on the same cargo between the same points.

Q. And it was not in the control of the railroads to say what they would get?

A. No. we didn't know.

Q. They could either stay out of the business wholly or take it, as you say, in the nature of surplus business for what it was worth?

A. Yes.

Q. Mr. Munroe, what has been the conventional figure among railroad men for charging up on company books for the cost of hauling railroad material?

A. Half a cent per ton per mile.

Q. 5 mills per ton per mile?

A. Yes.

Q. What is that supposed to represent?

A. Actual cost of movement.

Q. Actual cost of that movement. Has not that always been viewed as a minimum, as a charge for moving company material, without any idea of any profit in the movement?

A. Yes.

Q. For instance, the company moving its own fuel or its own material for construction purposes, owned by itself and moved by itself for use by itself?

A. Yes.

Q. That, for many years, was considered by accounting men and operating men as a minimum that would cover the bear cost of moving the company's stuff?

A. Yes.

Q. Now, you spoke two or three times, expressing the idea that the transportation of lumber, for instance, was properly viewed as a partnership between the railroad and the shipper and the consumer; and, if I understand you, your idea of this

lumber rate from the Pacific Northwest was that it originated and for many years was on an abnormally low basis?

A. Yes.

Q. The railroad in taking its share of the matter, or standing its share of the burden, had started in at a rate that was lower than, in your opinion, was a fair rate? Do I understand you? Your expression was that as the change came in the conditions of the lumbermen's business, the great increase in price, that you think it is fair that the railroad should share in that to the extent of getting its rate upon a reasonable basis, and no more?

A. I think so.

By Mr. Dillard:

Q. Mr. Munroe, have you there the per ton mile rate on lumber (I asked to have one gotten up at lunch) and other items? Mr. Wimbish wanted them.

A. Yes. Since the morning session I have obtained figures showing the average revenue per ton per mile on lumber of the Union Pacific system, which includes the Union Pacific Railroad, the Oregon Short Line Railroad and the O. R. & N. Company. The figures are as follows:

Year.	Mills per ton per mile.
1904	6.6
1905	6.59
1906	5.95
1907	6.24
1908	7.3

Q. Now give it on all business?

A. That is on all lumber over the system lines. Those are the figures.

Q. Mr. Wimbish also asked you what the rate per ton per mile was on all commercial freight.

Mr. Wimbish: I didn't ask that question, but I have no objection to it.

Mr. Teal: It is important to have it.

Q. Well, I will ask it now?

A. On all commercial freight—

Year.	Mills.
1904	9.7
1905	9.06
1906	9.15
1907	9.62
1908	1.003

Q. Returning to lumber, which we have brought in view, I find there that it was pretty regularly decreasing per ton per mile, was it not, down to nineteen hundred and—

A. 1907. 1904, '5 and '6 decreased; 1907 increased 29/100 of a mill.

Q. In 1907 there was an increase, a very slight increase in the per ton per mile on lumber. How was that year as to traffic?

A. One of the best in our history; and as to other traffic, there was an increase from 9.15 in 1906 to 9.62 in 1907.

Q. That was, then, brought about by the heavy business you did?

A. General development all over, that year of 1907.

Q. In 1908, I notice there that your per ton per mile jumps until it is considerably larger than it was at any other time?

A. 7.3 mills.

Q. How do you account for that?

A. The general depressed condition in 1908 resulted in the lumber dealers buying very largely from hand to mouth, from the nearest point of supply, often from jobbers, which meant a short haul for the Union Pacific lines. For instance, a man in Nebraska, 150 miles from Omaha, who normally might ride out to Portland, Oregon, for a car of lumber, in an emergency telephones Omaha to ship me a car of lumber tomorrow. Now, our revenue per ton per mile on the 150 miles is very much greater than it is on the haul from Portland. And that, in my judgment, explains the 1908 difference, because there was no material difference in that year in the rates in the aggregate from the various points of supply to the various points of consumption.

Mr. Wimbish: Pardon me just a moment. Mr. Munroe, in order that we may get the full value of your comparisons, would it be feasible for you to give the average length of the houl on lumber in each of these years and the average length of haul on all traffic?

A. I think we [illegible].

Mr. Wimbish: I would be very glad if you could.

The Witness: If we have the figures so prepared we will be very glad to give them to you.

Mr. Dillard: I was going to say this, Mr. Wimbish: If they are prepared, so we can do that, we will be very glad to do it; but if they are not prepared, the only way on earth that that could be done would be by going to the entire number of way-bills handling lumber, which would be an impracticable thing to do.

Mr. Wimbish: Oh, I don't ask anything—

Mr. Teal: I would like to have it in the record anyhow that the only fair basis of any of these comparisons at all is to get the basis on which they raised. Now, a short haul and a long haul are not comparable as rate matters.

Mr. Dillard: Of course not.

Mr. Teal: And simply to put in comparisons without explanation would mean nothing to a traffic man or anybody else who knew anything about the business.

Mr. Dillard: We are answering the request of your own side on that, Mr. Teal; you remember that we were asked to furnish these. If we can furnish the other we will be very glad to do it, Mr. Wimbish.

The Witness: There is one answer I made to Mr. Wimbish this morning that I wanted to add a litle to, with permission, as to the propriety of the railroads reducing the lumber rate on account of the depressed condition of the industry subsequent to the panic, which practically was November 1st. I said I thought it would have been a crime to have made a reduction. The idea I had in mind was this: there were a great many who, prior to 1907, had no fear at all of coming disaster. They went ahead and stocked up with the usual freedom and had these lumber lots on hand when the depression occurred. Now, having purchased from a firm in the west, the chances are they bought on time, and anything which would impair the credit of the buyer would naturally interest the seller. So, I have assumed on general principles that the policy, for instance, as adopted by the U. S. Steel Company, which many believe today did more to avoid panicky conditions than any other thing that happened, namely, of closing down their mills rather than attempting to run them by reducing prices, and when the reduction of prices meant impairment of credit of those who had previously purchased, it was wiser all the while to stop the production until the stocks on hand, bought in good faith, could be, under normal conditions, exhausted. And for that reason I think if the railroads had reduced their freight rate and the lumbermen had reduced their prices and offered their wares in consuming territory at a price below the cost of that on hand and waiting sale, that they would have injured the trade and their own industry much more than they could possibly have been benefited by increasing their shipments. So that I regard the closing of the mills subsequent to 1906 as one of the inevitable results of the panic and entirely foreign to freight rates, and I think it would

also have been a crime for them to have reduced materially their invoice the same way.

Mr. Wimbish: Do I understand you to mean, Mr. Munroe, that in the opinion of the carriers it was better to destroy the lumber manufacturer than to disturb existing prices and probably cause loss to dealers?

The Witness: Oh, no.

Mr. Wimbish: Wasn't that the effect of your answer?

The Witness: No. I claim that in refusing to reduce the prices, the lumber dealer in the west acted wisely and served his own interest; that if he had reduced his prices to operate his mill and make shipments and the railroad had reduced the freight rate, instead of losing the profit on the increased shipments he would probably have settled for 10 cents on the dollar on his previously unpaid bills. In other words, there was an obligation, commercial in character, resting absolutely upon the shipper, after having sold in good faith, not to turn around and make it impossible for that man to sell except at a great big loss.

Mr. Wimbish: Just preceding this advance had there not been for some months quite a car shortage?

The Witness: Yes, there had been more or less car shortage all during the year.

Mr. Wimbish: Isn't it true that at the time you gave this notice, or at the time of the panic, that these western manufacturers had large stocks on their skids that they could not ship because you had not furnished the cars?

The Witness: I never believed that. I don't believe it today.

Mr. Teal: Then, you were not out there?

The Witness: I think the car shortage—if we had had 50,000 cars empty, aavilable for shipment, it is my belief that not more than 15,000, as a maximum, would ever have been used. We have had the same experience, and I believe that they ordered far in excess of their ability to ship. We know from our own experience with other lines that they very frequently, in times of car shortage, order twice as many cars as they want, in the hope that they will get half what they need.

Mr. Wimbish: Do I understand you to say, Mr. Munroe, that in your judgment the lumber manufacturers and shippers were standing in the way of their own interest when they were clamoring for the taking off of this advance on lumber? In other words, that the carriers have superior wisdom and are charged with the duty of protecting the lumber dealers against themselves?

The Witness: No, sir, the carriers have no right to play favorites or exercise paternalism. They have an unquestioned right to their own opinion. They probably have not any more wisdom per capita than the individual who may engage in other lines of traffic. But the people who are engaged in the lumber business, if I am correctly informed, largely share the views I have expressed. There are some who do not, of course. But I think you would find that the dealers in the interior would be a unit on that proposition. I can understand why that might not be true in all cases among the shippers.

Mr. Wimbish: Then, you do not think the large number of manufacturers represented in the suits or complaints from Washington and Oregon fairly represented the views of the lumber manufacturers in this litigation?

The Witness: They may fairly represent the views at their end of the line, but they do not represent the interests engagd in lumber, which include the men who sell to the consumer as well as the men in the west who sell to the eastern dealer.

Mr. Wimbish: Then, in protecting the man in the east who does sell to the consumer, you were playing favorites, were you not?

The Witness: We were not protecting anybody. I contend this, Mr. Wimbish, that if our rates had been reduced one-half on November 1, 1907, it would not have induced the sale of an additional foot of lumber. Why? For the reason that everybody was frightened to death, and if lumber dropped $2 a thousand every man would naturally have said, "Well, the bottom hasn't come yet." In other words, you can't sell lumber on a declining market. You can sell it very easily on an advancing one.

Mr. Wimbish: Then, the reduction in the rate would not have resulted in any movement to the east, and hence it could not have affected the dealers in the east who already had their stocks on hand?

The Witness: It would have made the price in the east for the dealer to sell his lumber at a sacrifice. Simply a commercial condition, that is all.

By Mr. Dillard:

Q. Referring to the figures that Mr. Wimbish asked for a few moments ago, Mr. Wilcox thinks he can get them up. He thinks maybe he has data from which he can do it immediately. But right on that line, it is a fact, is it not, Mr. Munroe, before we put in these rates that Judge Hanford issued his injunction and that very little or comparatively little moved on the advance rates?

A. That is my understanding.
Q. No great movement on it?
A. No.
Q. Are you sufficiently advised as to the conditions in the west to answer this question: that after the Commission delivered their opinion and order reducing the rates, that still lumber did not move to any considerable extent?
A. That is my understanding.
By Mr. Teal:
Q. Mr. Munroe, the first question that was asked you in connection with the improvements on the Union Pacific was if you were familiar (that was about the effect of it) with the capital expenditures made in that behalf by your system.
A. I know there was a large amount of money spent, but I could not—
Q. I want about the capital expenditures. I mean are you familiar with the accounting department?
A. Not enough to testify, no.
Q. That is what I thought. You don't know whether it came from capital account, or whether it came from rates, or where it came from?
A. I haven't the information to testify about that.
Q. All you know is that a large amount was spent, from some source, in improving the system?
A. Yes.
Q. Now, in connection with the reduction of rates that you testified about, generally speaking, I will ask you if, in 1889, the rate from Portland over your system was not 40 cents to Denver, Colorado, Pueblo and common points?
A. I believe there was a time when that rate obtained, but I could not deny it was 1889; I think there was a rate at one time.
Q. I will ask you if in 1893 the rate from Portland, Oregon, to Council Bluffs,—Omaha, Nebraska, was not 45 cents, and that remained in effect until April 15, 1901?
A. I think there was a rate of that kind.
Q. And I will ask you if in 1901, April, that rate was not advanced to 50 cents?
A. Very likely.
Q. And then the next advance was in 1907, November, the last that was put in?
A. Yes.
Q. So that, so far as shipments from Portland and those points on your system are concerned, instead of there being

reductions in rates, there have been continuous advances; is that not true?

A. The advances are as set forth in those figures of which you speak.

Q. At the same time there have been these advances in the minimums; isn't that true?

A. Yes.

Q. So that so far as the lumber traffic is concerned, your remarks about the reduction of rates generally does not apply on your system, does it?

A. Well, we have made reductions on—we don't speak of lumber solely as coming from the northwest.

Q. No, I am speaking now of lumber.

A. So far as we are concerned we got away from that 40 cent rate as indicated in the record.

Q. Now, what do you understand this case is about? Do you understand this is a case where you are trying mill men for the profits they have made, or is it a case bearing upon the reasonableness of a rate for carrying a certain product?

A. On the reasonableness of a rate for the carrier.

Q. Yes, that is what I suppose. So that the question of the profits of the lumber men or the question as to whether stumpage has advanced,—those questions are really immaterial in a case of this kind, are they not?

A. Oh, no; no, they are incidental, but they are well worthy of our most careful consideration, and any shipper of magnitude, I think, would be quite willing to so accord the carriers.

Q. Then, as I understand it, the advances in the price of stumpage and the profits of the lumber men do enter into this rate?

A. They have a bearing.

Q. Yes.

A. I think, in other words, that the railroad man is not doing his duty if he allows an abnormal price for the production of an article, an abnormal price for the profit of the jobber, an abnormal price paid by the consumer, and his revenue is always at a minimum.

Q. I see.

A. In other words, I believe that a carrier is entitled to the fluctuations due to conditions just as much as the buyer or seller of an article.

Q. Then, I would like to get your opinion as to the value of these things. According to your idea, if there is a falling off in an industry, you think rates should be reduced accordingly?

A. Yes, sir, I think it is the duty of a railroad company to foster its industries down to the lowest possible point at which it can keep the industry alive, and I think it should also share in the profits when the industry is profitable, and that times change and we change with them.

Q. And that is your theory of rate making?

A. That is the commercial rate making.

Q. And you mean by commercial rate making, actual rate making?

A. Yes; the real, practical work.

Q. Yes, that is what I mean. You also stated that in most of these cases it is not shippers asking for reduction but it is something—

A. No, I said there frequently were cases —

Q. Now I want to ask you something about that. You referred to one case. You probably had in mind the George J. Kindell case, from Denver.

A. Yes.

Q. And the Denver Chamber of Commerce were the people who appealed to their senators, were they not?

A. Yes.

Q. Will you tell us why the Denver Chamber of Commerce did not want lower rates into Denver?

A. I do not think the Denver Chamber of Commerce would object as a body to any rate reductions made by the carriers; but the real meat of the Denver case is the obliteration, the wiping out, of base points. Now, Denver is vitally interested in being able to supply the trade west of it. The recognition of the Denver case meant the wiping of the Missouri river as a basic point, the same as the Burnham, Hanna and Munger case represented the wiping out of the Mississippi river. Those two basic lines being obliterated, Denver saw that her line would naturally have to drop out of sight, and the time was near at hand when Omaha and Kansas City, if you please, would ship right by to Denver, to Leadville, Grand Junction, Canon City—that the whole inter-mountain country, and that a man in Denver would be injured.

Q. Now, that is just what I wanted to know. Now, as a matter of fact—and I think you know it, Mr. Munroe,—it was a purely straight-up-and-down jobbers' fight; that in Denver they wanted to have the territory they were accustomed to having, without the competitive conditions of the east; isn't that true?

A. No, it is far beyond the jobbers.

Q. Then, will you explain to me how a reduction of rates

to Leadville and to that consuming territory can affect the consumers detrimentally?

A. The interest in Denver—of course the jobber is primarily affected. Every man, woman and child in Denver is interested in anything which tends to build that interest up. The people in Leadville are best served, so it is believed—

Q. So what?

A. So it is believed—

Q. By whom?

A. By those who have given a study to the subject.

Q. Well, who are they? The Denver jobbers?

A. The people of Colorado.

Q. You think so?

A. Yes, sir. I contend it is manifestly to the interest of every man, woman and child in the entire State of Colorado that they have within its boundaries as good, as large, as prosperous a commercial city as natural conditions justify. I contend it is worth a good deal to the man in Leadville to be able to telephone Denver in the afternoon and have his freight shipped that night. I contend it is just as necessary commercially, as it is for you, if you live in Leadville and are a man of family and one of your members is stricken in the afternoon that you be able to call a Denver surgeon right to you, quick. In other words, a man must not depend on an eastern city manufacturing boots and shoes, if you please, for his shipments. He has got to have a supply nearer at home. Now, Denver has grown up under those conditions. It never has been a burden to anybody. The Missouri river has grown up naturally. The Mississippi river has grown up under them. And there is not a man, woman, or child, I contend, west, using supplies purchased in those cities, that pays one fraction of a cent premium that you can disappoint by reason of the application of the basic principle. So, I say, that it is not entirely selfish on the part of the jobbers.

Q. Then, this case was a case where there was a reduction of rates ordered to an entire section of the country, was it not?

A. To Denver, yes.

Q. Well,—

A. Yes, it took the common points.

Mr. Walter: Didn't that order apply to Denver and Denver only?

The Witness: Denver and Denver only.

Mr. Walter: And not Colorado common points?

The Witness: The Commission's order was for Denver, but there were other features of the law. Given a rate to Denver, under the fourth section, the Denver rate would not be exceeded. We have not interpreted—at least I have not—the Commission's order as setting aside the effect of the fourth section of the Act.

Q. Well, at any rate, it reduced rates into Denver, did it not?

A. It did yes.

Q. And to that extent the consumers ought to get the benefit?

A. You would say so; they ought to, yes.

Q. Yes, that is what I mean.

A. And on principle they would.

Mr. Dillard: I think he has answered that fully in his testimony, don't you?

Mr. Teal: No, I don't think he has answered my question at all. He has made a very good speech, but he did not answer my questions.

The Witness: I don't believe the consumer gets one cent of it.

Q. That is right. Then, you think it doesn't matter what the rates are within certain limits—the consumer gets no benefit in reduced rates?

A. I think that is true of a great many commodities; in fact I know it is true of a great many.

Q. Suppose rates are advanced—who gets it then? Who pays it?

A. I suppose the people would pay it then, because the jobber would add it to his price.

Q. But on a reduction no benefit comes to anybody except the railroad—

A. Well, it is not always so in the case of an advance. I had a case in Omaha where a dry goods man paid 50 cents a hundred more than his competitor paid in Chicago, and he guaranteed to sell to the Omaha consumer the Chicago price. He said, "There is enough it in for me to absorb the 50."

Q. Well, he was in good shape, wasn't he?

A. He is hollering now for rates.

Q. I would like to ask you this: If, in your experience, it is not a fact that wherever there is a change asked in connection with what we might call rates to jobbing centers, where there has been a relationship existing between rates and other centers, which is generally the case, there are not

always intervening parties—I am speaking now of shippers, generally speaking—on the side of the railroad as against any change? Hasn't that been the fact quite often?

A. Yes, that is very largely true.

Q. So that, as a matter of fact, generally speaking, what is in your mind when you speak about these shipments, is the carrier and the shipper himself?

A. Oh, no; I am the consumer.

Q. You are for the consumer good and strong?

A. I am for the consumer just as much as I am for the shipper.

Q. For anybody? And the consuming public, individuals also, in this Denver case, are petitioning the Interstate Commerce Commission to raise the rates, aren't they?

A. No, they are not raising them. I don't know of any question that is so thoroughly misunderstood and misinterpreted as the case of freight rates and the assumption that an advance means an advance price to the consumer. That is not correct in every case. Sometimes it is and sometimes it isn't.

Q. Take, for instance, out in our country. Suppose you advance the rate on wheat up in eastern Oregon; what would be the effect on the price?

A. Take wheat?

Q. Yes, just take that as an illustration.

A. Take anything of that nature; why, it would have some bearing on it.

Q. Take it on lumber.

A. Take wheat and lumber and coal and things of that character, or take dry goods and lumber—

Q. I was speaking of these larger matters. Now, you said a while ago that 5 mills had always been considered in your railroad experience as expressing the actual cost of operation.

A. The haul for company freight.

Q. I don't care anything about the haul for company freight.

Mr. Dillard: Well, that was his answer.

A. We regard it as cost.

Q. You regard it as cost?

A. Yes.

Q. Are you prepared to give the elements that go to make up the 5 mills?

A. No, I am not; at this time I am not. We have men that are.

Q. You have men that are able to?

A. Operating men know more about that than I do.

Q. Will you give me the name of any man in your employ who is able to give the cost—the absolute cost of operation on a ton of freight?

A. No, I wouldn't say that. I say that we know in a general way we have expenses attending the movement of this freight. It might be very difficult to show the actual cost for moving any particular ton of freight between any particular point. But, generally speaking, the consensus of opinion is, born of experience and the custom, that 5 mills is fairly representative of the cost of movement, and that is the charge which we have based on in handling company material.

Q. Then, if there were large railroads in this country handling freight for very much less than 5 mills per ton per mile, you would consider they were headed for a receivership, wouldn't you?

A. Oh, no, I wouldn't say that.

Q. Why not?

A. Because there may be different conditions.

Q. Then, when you say that 5 mills per ton per mile on all the roads in this country represents the basis of cost, you don't mean that?

Mr. Dillard: He didn't say that.

A. I am speaking of the roads west of the Missouri river.

Q. Take the the Chesapeake and Ohio. Are you familiar with the operation of that road?

A. No.

Q. Are you familiar with its average rate per ton per mile?

A. I understand it is very low; I don't know what it is.

Q. Do you understand whether it is more or less than 5 mills?

A. I understand that their rate on coal is less than 5 mills, but I don't know what their general average is.

Q. And they handle enormous quantities of that, do they not?

A. I believe the ydo.

Q. Now, on this question of millage per ton per mile, I would like to ask you this: wouldn't it be a necessary effect or a necessary result that if you were operating a road, we will say, commencing with 100 or 200 miles, as you extended your road—I mean in mileage and in length—that the rate per ton per mile would continually grow less?

A. That would be the natural tendency.

Q. And that would not mean because the rate per ton per mile, on the average was getting less than that road was not making money, would it?

A. It would depend on where we finally landed.

Q. That is true. I don't suppose that you could make your haul long enough, even if you went around the globe, to make a rate of 1 mill per ton per mile. Now in theory it would be all right. You would go on 5000 miles, and the next 5000, but there comes a point below which you cannot go.

Q. That is true, of course, but I am speaking practically, as a matter of fact, on longer hauls the millage is small?

A. On the longer haul the rate per ton per mile is supposed to decrease with the decrease in the service.

Q. In other words, if you did not do it that way you could not haul any freight to the Pacific coast?

A. We recognize we cannot get as much per ton per mile for long hauls as we do for short hauls.

Q. You say, in your opinion as a railroad man, a traffic man, that 5 mills per ton per mile represents costs of movement on the Union Pacific Railroad—under oath?

A. I didn't say that. I said we have been assessing our company material on the basis of 5 mills per ton per mile. I do not know of any—I was going to say I did not know of any traffic hauled at less than 5 mills, but it may be possible in some cases we do not get that. I think we do, though.

Q. Now, what do you say, as an expert, and with your years of experience on the road, as to what is actual cost in handling traffic?

A. I don't know.

Q. You don't know

A. No, sir.

Q. You have no one in the employ of your railway who can tell, have you?

A. I don't know; I don't know of anybody that can tell. It is an ever varying quantity.

Q. And you never heard any one state positively on that, did you?

A. I don't recall.

Q. You don't know of any way that could be determined, either?

A. No, I do not; not to be of any value for the future, because the conditions are ever changing. What is true of yesterday is not true of tomorrow.

Q. So, this 5 mills is just simply used as an arbitrary measure for carrying company freight?

A. It is generally arbitrary, yes.

Q. Mr. Holden, in his questions, said something about soliciting this export and import business. Prior to those rates being taken out, was that business solicited by the various railroads?

A. Oh, yes.

Q. You wanted the business?

A. There is no rate too low for a solicitor.

Q. I see.

A. There cannot be.

Q. And those solicitors were in your employ?

A. Oh, yes.

Q. And you knew what they were doing?

A. It is the solicitor's business to work for freight regardless of rates.

Q. I see. But you carried it?

A. Oh, yes.

Q. The solicitor has not the power to make rates, has he?

A. No.

Q. He simply solicits for business on the rates?

A. He has got to assume there is some good reason for the rate having been made and the company wanting the business. I may add, when the rate was 2 cents a hundred by boat from New York to Galveston, I think there was increased efficiency in soliciting, because there is nothing more attractive to a solicitor than to be able to attract the maximum interest for the shipper, and if he can ever give him anything then he gets busy.

Q. Would you think as a traffic man, taking the average return on lumber from 1904 to 1908, which averaged from 6.6 mills to 7.3 mills per ton per mile as against from 9.15 to 10.003 per ton per mile on all freight, that that was disproportionate?

A. I haven't worked out those percentages.

Q. Well, I have just taken them down here.

A. There was an increase—well, let us see—from 5.95 to 6.24—that is 29/100—in 1906 and 1907, respectively.

Q. Well, 1908?

A. 1908 was a larger increase. I regard that 1908 increase as abnormal.

Q. But you also had an increase in your others in 1908?

A. Yes. You see it has increased substantially, say, one-sixth. One was 88/100 increase on general business and the other was 29/100 on lumber.

Q. Now, the point I make—

A. That is about the relation. Three times as much, I think.

Q. Taking the whole rate situation from 1904 to 1908, as a traffic man, would you expect to get a greater amount for lumber as in relation to the amount on all your commercial freight than that shows there?

A. Yes, I would.

Q. You would? Why doesn't that include all your less than carload business?

A. I will tell you why.

Q. Well, does it include all your less than carload?

A. It includes our whole business.

Q. It includes your whole business on all your rates?

A. I say yes, and I will tell you why. I think the lumber rates in themselves are much nearer rock bottom than merchandise rates are, and I think from now on, say for the next ten years, we will have to face reductions on other commodities, without any corresponding reductions on lumber. So that the spread, if I may use that term, existing today between lumber and other commodities is bound to be narrowed by reductions on other commodities. Now, if we have a lumber rate, if you please, of 25 cents between two given points, and a machinery rate of 50 cents, I think that 50 cent rate will naturally come down faster than the lumber rate will come down; it may come down without any change at all in lumber. So that the percentage would seemingly show up against lumber, when in reality it is just a changed condition applied to other freight.

Q. You think the other rates will be lowered?

A. Yes. I think lumber is down about rock bottom.

Q. Now, you advanced a good many terminal rates to the coast, didn't you, January 1st?

A. We advanced some. Probably got to put them back, even lower; everything indicates it.

Q. That's fine.

Mr. Dillard: I don't know whether it is or not. We may all be out of business.

The Witness: I have known a community to petition the railroad to raise the rates, or they would be ruined.

Mr. Teal: There haven't been any handed me lately.

Q. Under the heading "Products of mines" what is covered?

A. Oh, all coal, coke I suppose would come in there, all ores of every kind and character.

Q. That represented last year a trifle over 34 per cent. of the business of the Union Pacific Railroad Company, 26 per cent. of the business of the O. R. & N., and 47 per cent. of the business of the Oregon Short Line. Now, I would like to have you prepare a table covering ores and coal, giving the rate per ton per mile, for the same series of years that you have on lumber, and have it made a part of this record. It may show more or it may show less, but I would like to see what those do show.

Mr. Dillard: If we have to prepare it it will take too much trouble. If we have it we will furnish it.

Mr. Teal: As a matter of fact I think you have it.

Mr. Dillard: Then, if we have it we shall furnish it.

Mr. Teal: I ask that it be furnished anyhow. I think we want to get some of those things down.

Mr. Dillard: It simply depends on the amount of labor whether we will do it or not.

Mr. Teal: No, I don't think so. I think it will depend on an order of the court whether you will do it or not.

Mr. Dillard: I don't think the court will enter any such order.

Mr. Teal: All right. I shall ask, then, that there be filed in this case a statement covering the same period, the same series of years, as covered by the lumber, the rate per ton per mile received on the Union Pacific system on ores, and the rate per ton per mile received on coal.

Mr. Dillard: If we can furnish it we will be glad to do it, but if we have got to get it from waybills—

The Witness: If we have any figures, I think they can be combined. I think probably that would answer your purpose.

Mr. Teal: I have in cases had them handed to me without any difficulty at all.

Mr. Dillard: Well, you won't have any now if we can do it conveniently, but I have made one rule, and that is that I don't intend to put a lot of men to work simply to give evidence to a man on the other side. If I can get it in any reasonable way, I will do so.

Q. Now just one question on this revenue from cars. In connection with the minimum that is carried on hops and on

lumber and wool, etc., in order that there may be no just general statements made about what is carried in the cars, could you have prepared a statement for any month which you choose (I mean where hops and those things move) showing an average loading on hops, on hides, on wool, and on canned goods? I believe those are the ones that I used?

A. I think so.

Mr. Dillard: Just for a month, you want that?

Mr. Teal: Well, whatever the length of time.

Mr. Dillard: We can get that up, of course.

The Witness: I think we can give you our average.

Mr. Dillard: But when it comes to four years, it is quite different.

Mr. Teal: Whatever length of time that Mr. Munroe himself will say fairly illustrates the loading of the commodities referred to. I am quite willing to take your statement for that.

The Witness: I think our average on wool from navigation points is about 35,000 pounds.

Mr. Dillard: We will get that for you, Mr. Teal, with pleasure.

Mr. Teal: All right. Thank you, Mr. Dillard.

Mr. Dillard: Mr. Wilcox tells me he is satisfied we can get those other figures, and we will be glad to do it.

Mr. Teal: I am quite certain you can, because that is really important for you to know yourself, and no system on earth has got it down as fine as this one. I'm not joking.

Q. You were speaking a while ago about not believing that the amount of lumber piled out west in the yards, waiting shipment was as has been said, Mr. Munroe.

A. No, I said I did not believe that they had the orders for all the cars that they said they would load.

Q. Oh, I see. But I was speaking about the—

A. I have no doubt that the piles of lumber were very much higher than the orders would call for.

Q. But as a matter of fact, there was all through 1906 and 1907 a very severe car shortage all over the country, was there not?

A. That is true, yes, sir.

Mr. Dillard: I read into the record now the figures which are requested by counsel for defendants. I give the average haul of lumber for the fiscal years ending on June 30, 1904, to 1908, inclusive. They are as follows:

For 1904,	591.10	miles
" 1905,	592.20	"
" 1906,	722.59	"
" 1907,	706	"
" 1908,	559.88	"

The Witness: That bears out my assumption.

Mr. Teal: It bears out my theory, too, on the long haul.

The Witness: Well, we are both happy, then.

Mr. Holden: Which is the better—a theory or an assumption?

Mr. Dillard: Now, then, I give for the same periods the haul on all commercial traffic, showing that on other commercial traffic, while the rate per ton per mile increased, that there was not a corresponding decrease in the length of the haul, and the figures read, for the same periods, as follows:

For the fiscal year 1904,	394.87	miles.
" " " " 1905,	430.31	"
" " " " 1906,	410.27	"
" " " " 1907,	404.67	"
" " " " 1908,	402.77	"

Mr. Examiner, and gentlemen, I shall probably a little later desire to file certain information as to the stock, bonds, outstandings, and so on, of the lines involved in this suit. They are matters which I think could all be figured out from the annual report, and it may be that I will find the annual report sufficient without doing that. On the other hand, it may be that I can get that in much better shape by putting them just in tabulated form; and if so I will probably file these later.

Mr. Teal: We, of course, reserving the right to call witnesses on that subject.

Mr. Dillard: Oh, certainly.

Mr. Teal: And examine them.

Mr. Dillard: Of course I will furnish you with them if I do find them.

Mr. Wimbish: Getting back to the other proposition for a moment, would it be feasible and convenient to show with reference to all traffic the percentage moving in carloads and the percentage in less than carloads, and the same for these years.

Mr. Dillard: Let me ask some of our traffic men. Mr. Munroe, you or Mr. Wilcox will probably be able to answer that question.

Mr. Munroe: What was it?

Mr. Dillard: Mr. Wimbish desires to know if it will be convenient, if we have the figures so that we can show for these same years, commencing in 1904, and ending in 1908, the percentage of carload and the percentage of less than carload traffic.

Mr. Wilcox: No, we haven't that information.

Mr. Teal: May I ask this question? Those two figures now that are given us, shows the movement of lumber,—that is the mileage,—and it shows the movement of all traffic which includes that of lumber. Now, have you got separated all of the traffic except the lumber, so as to show how long that movement was?

The Witness: No; the average takes the whole. We have got some information on the other commodities which Mr. Dillard has there.

Mr. Dillard: Yes, we have these to read to you,—the figures we had when we had our row about some—

Mr. Teal: I didn't have a row; you had the row.

Mr. Dillard: Well, I know—a row about nothing. I had these right in my hand. These Mr. Wilcox did. We have to keep those straight as we go along. Shall I read that now?

Mr. Teal: Yes. Who were these examined by—Mr. Wilcox? I may want to examine on these.

Mr. Dillard: Yes; but he only gets them from our reports. I don't know that he could tell you anything about them. They are furnished originally by the auditor.

Mr. Teal: What are you going to read first, Mr. Dillard?

Mr. Dillard: I now desire to read the per ton per mile revenue on coal and ore for the fiscal years 1904 to 1908, inclusive. Coal is divided into "Coal, anthracite," and "Coal, bituminous." I read first, "Coal, anthracite:"

1904,	1.07
1905,	1.06
1906,	1.062
1907,	.938
1908,	.779

Bituminous coal next:

1904,	.57
1905,	.551
1906,	.554
1907,	.627
1908,	.662

Ore:

1904,	.65
1905,	.601
1906,	.61
1907,	.644
1908,	.663

The Witness: That is from the three lines?

Mr. Teal: That is the three lines, yes. A system, so I understood,—the Union Pacific system.

Mr. Dillard: Yes, that is right.

Mr. Teal: Have you got the amount of anthracite as compared with bituminous?

Mr. Dillard: The full?

The Witness: It is very small.

Mr. Teal: I know the anthracite is very small; that is what I want to show.

The Witness: About one per cent. of the soft coal.

Mr. Teal: Do you know the percentage of anthracite movement, Mr. Munroe? I just want it in the record?

Mr. Wilcox: The percentage is not figured out here. In 1908, 30,000 tons of anthracite; 2,700,000 tons of bituminous, that is about the rate of it.

Mr. Dillard: That would be about 1½ per cent.

Mr. Teal: See if this would suit, Mr. Dillard. It is stipulated that the movement of anthracite coal in 1908 was about 30,000 tons; the movement of bituminous coal about 2,700,000 tons; and that is fairly illustrative of the movement of the two characters of coal over the system. Is that correct? I understood Mr. Wilcox to state that.

Mr. Wilcox: Yes.

The Witness: Yes, our anthracite was very very small.

Mr. Dillard: That is all that I personally have to offer for my lines at this time.

Mr. Holden: I would like to ask Mr. Woodworth a few questions at this time.

J. G. WOODWORTH, being duly sworn as a witness on behalf of the complainants, testified as follows:

Direct Examination by Mr. Holden.

Q. Mr. Woodworth, you are traffic manager of the Northern Pacific?

A. Yes.

Q. And how long have you been connected with railroad traffic matters?

A. I have been in positions where I had to do with the making of rates for about 20 years.

Q. Well, generally speaking, are you familiar with the rate situation on the Northern Pacific lines?

A. Yes.

Q. And from your experience have you become familiar with the movement of lumber over that line?

A. I think I am fairly well acquainted with it.

Q. You have already testified in this case before the Commission?

A. Yes.

Q. I would like to direct your attention to certain of the tables of rates introduced at the hearing before the Commission by the witness Mr. Anderson, that are shown in the volume filed as an abstract of evidence by the complainants in the cases before the Commission, beginning on page 112.

Mr. Walter: What is the number of the exhibit?

Mr. Holden: I haven't got the number of the exhibit; but it is entitled "Table 3," and it shows certain comparisons of white pine rates over Hermansville, Michigan, with rates from Portland, Oregon, over the O. R. & N. line, for equal distances. About where is Hermansville, Michigan?

A. It is in the northern peninsula of Michigan; I don't know exactly where.

Q. It is east of Wisconsin?

A. Yes, sir.

Q. And, of course, east of Minnesota. Where are the points referred to in the table in Minnesota and North Dakota? In what direction from Hermansville, generally speaking, I mean?

A. They are west from Hermansville, and located on the Soo Line.

Q. Will you state briefly the conditions surrounding the movement of lumber, if there is any, from a point like Hermansville into Minnesota and North Dakota points which would bear on the rates shown there?

A. The lumber rates generally from Northern Michigan and Northern Wisconsin are blanketed, as we term it, because the movement is generally in the direction of Chicago, and the distances are approximately the same, and for the purpose of making rates to the western territories, the railroads, for some reason which I cannot fully explain, have blanketed the territory in connection with those tariffs as well, probably because they wanted to put all the mills on an equal basis. Hermansville is one of the most distant points from this Dakota territory which could be found in this group of Northern Wisconsin and Northern Michigan points.

Q. Well, would the haul of lumber from a point like Hermansville, remote towards the east, be right through Wisconsin and Minnesota lumber districts?

A. Yes. If any lumber were shipped from Michigan points to North Dakota, it would come in competition with lumber shipped from the Minnesota mills, and points like Bemidji, Crookston, Little Falls and Cloquet, and when they got further west, in Dakota, out to Minot, for instance, they would meet the competition of lumber shipped from Western Montana. The rate would be influenced by those conditions, and would also be influenced by the rates which are made from Minnesota points like Cloquet; some of those rates having been established by state authority.

Q. Well, points like Cloquet and such Minnesota points as you have mentioned are much nearer the Minnesota and North Dakota destinations than any such points as Hermansville?

A. Very much nearer.

Q. And what effect would that have upon the rate from a remote point like Hermansville?

A. Chicago being the basing market, and the rate from these Northern Wisconsin and Michigan mills, and from these Minnesota mills to Chicago, being approximately the same, the price of lumber f. o. b. cars at these Minnesota points and at these Wisconsin and Michigan points, would be about the same. Therefore, I don't see how these mills located in Northern Wisconsin and Northern Michigan could ever ship any lumber to these points in Minnesota or North Dakota; and however low the rate may have been fixed, so long as it was higher than the rate from the Minnesota mills, it would seem

impossible for any lumber to move from these points in Northern Michigan, and it is my understanding that none does move.

Q. That is what I was going to ask—if you had acquired information to determine whether there is any actual movement from a point like Hermansville, over the Soo Line, to these Minnesota and North Dakota points?

A. I asked the question of the general freight agent of the Soo Line and was told that no soft lumber had been shipped from that district; there might have been some maple lumber.

Q. Some maple lumber, which is a hard wood?

A. A hard wood.

Q. And so, so far as soft lumber, or lumber which would be spoken of as the kind that fir lumber from the coast is, these rates from Hermansville to such Minnesota and North Dakota points as were shown, would be characterized as largely, if not entirely, paper rates?

A. Entirely so; and I don't think any comparison based upon those rates would be instructive.

Q. Now, the witness prepared this table showing rates from Hermansville to the points we have been speaking of, in one column, with rates from Portland, Oregon, over the O. R. & N. lines, to stations in Idaho, chiefly, of equal distance. Taking, for instance, as an illustration, he shows the rate from Hermansville, Michigan, to Carrington, North Dakota, a distance of 673 miles, as the comparison with a rate from Portland, Oregon, to Mindoka, Idaho, of the same distance. Will you state whether a comparison of that kind offers any basis, in your judgment as a traffic man, for a consideration of the rate from Portland, Oregon, or the rate from Hermansville to Carrington?

A. I don't think it would, because the rates from Hermansville to points in Minnesota and North Dakota would necessarily be on a very low basis to meet the competition of Minnesota or Montana mills; whereas, there are no conditions which would make it impossible to establish and maintain the normal rate from Portland or other points in Oregon to these stations in Idaho, except as they might be affected under the fourth section by rates made to points like Ogden and Denver.

Q. By that you mean that the rates to intermediate points between Ogden or Denver, running back toward Portland, would be no higher than the rate to the Denver or Ogden point?

A. Yes, sir.

Q. By resject to the fourth section of the interstate law. Well, if I understand you then, you do say and express the opinion that the circumstances and conditions which would affect the rate from Hermansville to the points shown in the first column of this table, are wholly different from those which affect the rates shown in the second column, from a point like Portland to these small Idaho interior points?

A. Entirely different.

Q. And looking through the subsequent tables, in Table 3 and Table 4, all of which seem to be devoted to Hermansville rates, would you state generally that you would express the same opinion as to those as you have already as to the first set of rates?

A. Yes, sir. And I don't think any comparison of rates, according to distance, is of any value, except as it may take into consideration the volume of business and the conditions which dictated the rates.

Q. Now, just what do you mean the conditions?

A. For illustration: these tables deal very largely with rates from points in the Southern States to Chicago and St. Louis, which, at the time of their original establishment probably represented the highest rate that was obtainable on that basis, in view of the competition which the southern lumber met in those markets, as explained by Mr. Munroe this morning.

Q. Now, I would like to dwell just a little bit on those conditions. I wish you would explain, according to your understanding, what the conditions were, and have been affecting all-rail rates on lumber from the northern white pine district to such markets as Chicago, St. Louis, and that interior country?

A. I first had to do with these rates east bound from Oregon and Washington in 1887, and at that time the lumber from Wisconsin, Michigan and Minnesota practically controlled the markets in the Middle Western states. It was distributed from Chicago and the principal Mississippi river crossings of the Iowa trunk lines, and controlled the markets as far south as St. Louis, and controlled the markets of Kansas and Nebraska, and we encountered it even in Colorado. It was shipped as far west on the northern lines as Montana there, there being no development of the lumber business to any extent in Montana at that time. Any rates made from the south, or any rates made from the west into any of the territory I have described, took into consideration that competition, the price obtainable for the lumber in that territory.

Q. Would it have been possible to have made a rate from the coast lumber producing country that did not recognize the competitive conditions of northern and southern pine in this middle western country, and permit the western man to sell at prices that would meet that competition?

A. That for many years was the sole basis for the rate, and the further back you go the less lumber will be found moving from the west; and I recall very distinctly the repeated complaints we had to the effect that the rate was not low enough to enable them to compete with the northern lumber.

Q. Now, I would like to have you analyze a little bit the conditions that bore upon the making of rail rates from the north, the white pine rates down to Chicago, in competition with transportation on the lakes, and by the floating of logs down the Mississippi river. That was covered to some extent by Mr. Munroe, but I would like to have you state your understanding of those conditions?

A. Chicago was the original distributing point for lumber for this entire western territory, the supply being received by way of the lakes, principally from Lake Michigan ports, and then later from Lake Superior ports,—Duluth and Superior. Then these mills were operated along the Mississippi river, being supplied with logs that were floated down the Mississippi river, and its tributaries, and then a little later they began sawing the lumber in the northern states and shipping it direct. That was the condition up to about 1893 or 1894, and then the price of the northern lumber began to go up gradually, by reason of its being cut off and costing more to bring the logs to the mills, and other conditions, with which everybody is familiar, and that increase in the cost of the northern lumber delivered at all of these various destinations in the middle west continued, and the tables which were filed at Washington show that there was an increase of practically 100 per cent. in the 11 years prior to 1907, f. o. b. Minneapolis, using that as the illustrative point.

Q. You mean increase in the price?

A. In the price of the lumber at Minneapolis. Now, the cost of delivering lumber by schooner at Chicago, was, and always has been, the basis for the rail rate from Wisconsin and Minnesota points to Chicago, and the rates from Wisconsin and Minnesota points to St. Louis and to the territory lying west of the Mississippi river, were originally based upon the cost of floating the logs down the river, or floating lumber down the river, and distributing it at points like Clinton, Burlington, Keokuk.

Q. What influence on a rail rate does the transportation of lumber by schooner from the head of the lakes to Chicago have?

A. As I say, it absolutely fixes the rate obtainable, say, from Duluth to Chicago. That is the reason today that the 10-cent rate made by the Duluth-Chicago lines—

Q. Transportation by schooner in that way is at the very lowest kind of cost, is it not?

A. Yes, sir.

Q. And that influence is maintained and continues today and is shown in the low 10-cent rate that the rail lines have to establish and continue from St. Paul to Chicago, in competition with this low transportation by the lakes?

A. Yes, sir. It has been very well illustrated by the fact that from interior points in Minnesota, which are no further from Chicago than is Duluth, but which are not exposed to this lake competition, we get higher rates according to the cost of shipping that lumber from those mills to Duluth.

Q. Now, speaking about the floating of logs down the Mississippi river; as I understand it there were saw mills at various points along the Mississippi river clear down probably to St. Louis. Those mills obtained their logs at the bare cost of floating them down the river; they saw them into lumber and then ship them out into the interior country at the varying distances, which were short in comparison with the distance from the northern source of supply of logs?

A. That was the original condition.

Q. And the Minnesota manufacturer of lumber, who manufactured it either in Minnesota or Wisconsin, up close to the logs, or close to the woods, had to have a rate that would permit him to sell his lumber down in Iowa, for instance, in competition with the manufacturer at a point like Burlington, we will say, who had floated his logs down the river and manufactured his lumber there?

A. Yes, sir. The rate from Wisconsin and Minnesota points to Omaha, for instance, would take that into consideration, as it would also take into consideration the rate from Chicago and the cost of lumber delivered from Chicago, the same having been brought into Chicago by the lakes. That was the original condition.

Q. Now, under all of those circumstances bearing upon the rates which the railroads were able to get in hauling lumber from the north, what effect did that have upon the rates as to the character of the rates, whether they were low or otherwise?

A. Of course it resulted in what might be termed abnormal rates,—rates that were below the standard. The rates were lower than would have been made had lumber been shipped from Wisconsin and Minnesota points to these destinations without encountering any competition.

Q. In other words, is it a fair statement to say that they were such rates as the railroads were able to get in meeting this competition of low cost of transportation by the lakes and by the floating of the logs down the river?

A. That is a correct statement.

Q. And rates made by the water competition in that way directly bore upon and influenced the all-rail rate which the carriers were able to obtain?

A. Yes, sir; and of course that was also true of the rates made from the south, because the southern manufacturer was obliged to sell his lumber at a price necessary to meet the competition of this northern lumber.

Q. Is it a fact or not that when yellow pine began to come from the south to meet northern white pine in competition, that there was a prejudice against yellow pine—that it was not thought to be as good a lumber as the white pine?

A. That is true.

Q. And the railroads, as well as the manufacturers of lumber in the south, and the railroads bringing lumber from the south, had not only that prejudice to overcome in order to market the southern pine, but also had to meet these low rates from the north which had been made low by the lake and river competitive conditions you have referred to?

A. Yes, sir; just the same as the lumber from the west.

Q. And coming now to the condition that existed in this middle western country, including Kansas and Nebraska, influenced by the conditions you have referred to, those were the conditions, or at least some of the conditions, which had to be met by the railroads coming from the Pacific northwest, in order to give a rate which would permit the Pacific coast lumber men to meet this kind of competition and sell his lumber, as against white pine, as long as it lasted, and as against the yellow pine?

A. Yes, sir. When we found we couldn't carry lumber from the west at what might be termed normal rates, those conditions were the sole and only basis for the roads from the west.

Q. And the railroads did not have the opportunity of determining what the rate should be free from those conditions that you have referred to?

A. No, sir. The lumber could not have moved from the west under what I would consider normal rates.

Q. At and for some time after the rates from the Northwest were made in 1893, what was the feeling in the interior country as to the character of fir, in comparison with white pine or even yellow pine?

A. The Pacific coast manufacturers had to overcome a prejudice against their lumber. It was more difficult to work, and it took a long time to gain recognition for those things about the fir lumber which make it superior to white pine or yellow pine, for certain purposes, and until they had educated the trade and gained recognition for the merit of the lumber, they were obliged to make relatively low prices. The situation in that respect was very much the same as that with which the southern manufacturers were obliged to meet. I might say that there is still the same preference for white pine for certain purposes; and the only reason that other kinds of lumber are being used is because of the extreme high price of white pine. Carpenters, for instance, prefer the white pine; it is easier worked.

Q. White pine, of later years, has commanded a better market for eastern shipment, has it not, than for shipment into this middle west?

A. Yes, sir, and for special purposes, manufacturing purposes.

Mr. Holden: That is all I have to ask.

An adjournment was then taken until the morning of Saturday, April 24, 1909, at 10 o'clock, at the same place.

Room 627 Federal Building, Chicago, Ill.
April 24, 1909, 10 A. M.

The hearing was resumed before the special master, Hon. Frederick N. Dickson, at the above time and place.

Present:

On behalf of the complainants, Mr. Hale Holden, Mr. Charles Donnelly, Mr. F. C. Dillard.

On behalf of the defendant, Mr. Luther M. Walter, Mr. W. A. Wimbish, Mr. J. N. Teal.

J. G. WOODWORTH, recalled:

Cross-Examination by Mr. Teal.

Q. Mr. Woodworth, in testifying last evening about some of these rate tables prepared by Mr. Anderson, you did not wish to be understood that the mileage given, and the rates given, or the rates per ton per mile, are incorrect, do you, or misstatements of facts in the tariff?

A. Oh, no.

Mr. Holden: Just a moment. You mean correct at the time they were—

Mr. Teal: Well, we are all speaking now as of that time.

Q. How long have you been with the Northern Pacific railroad?

A. A little over four years.

Q. You are reasonably familiar with its operation prior to that time, are you not?

A. Why, not except as I might have knowledge of it—

Q. That is the way I meant.

A. —by reason of my connection with other railroads in the territory.

Q. The earnings af the Northern Pacific since its reorganization have constantly increased, have they not?

A. Yes, sir.

Q. Both the net and the gross?

A. Yes; until this last year.

Q. There was a slight decrease, then, in earnings this last year over the year 1907?

A. There was a very large decrease in the earnings, say, for the calendar year 1908.

Q. Do you know what the earnings of the Northern Pacific were, for the calendar year 1908—the net?

A. No; I could not state them exactly.

Q. They were sufficient to pay much more than a 7 per cent. dividend and carry considerable surplus and maintain the road, weren't they?

A. They were sufficient to meet all our charges and leave something to surplus. The decrease in the gross for the calendar year was something like $3,000,000.

Q. But you also decreased your operating expenses, didn't you?

A. Yes, sir.

Q. The Northern Pacific, in the last eight or nine years has been very greatly improved—the roadbed—physically, I mean, has it not?

A. Yes, they have spent large sums of money.

Q. Many millions of dollars, have they not?

A. And much more to spend.

Q. What is that?

A. They have spent large sums of money and must spend much more.

Q. But, as a matter of fact, it is greatly improved over what it has been?

A. Yes, sir.

Q. And the improvements are going on constantly?

A. Yes, sir.

Q. Now, the same facts obtain as to the Northern Pacific as do to the U. P., that you are carrying heavier trains, are you not, than formerly?

A. Yes, sir.

Q. Larger cars?

A. Yes, sir.

Q. Heavier loading?

A. Yes.

Q. The fact is that there have been increased economies and efficiency in operation on the Northern Pacific just the same as there has on the Harriman roads, have there not?

A. I think so.

Q. Now, taking the whole body of rates of the Northern Pacific do you figure that you get a reasonable return on the whole body?

A. With the conditions as they have been up to this last year, I should say yes. I think there might be some question about that, measured by the conditions in business of today.

Q. Generally speaking, then, you would say that your rates are fairly remunerative, as a whole?

A. Why, yes; if we could take our rates as they are today,

and they can be continued without change, I think we could get along.

Q. Now, taking this lumber rate specifically: you don't claim, Mr. Woodworth, do you, that that is a rate that does not produce cost of service on your road?

Mr. Holden: Which rate do you mean? The old?

Mr. Teal: The old rate.

Mr. Holden: The old 40-cent rate.

Mr. Teal: That is the one that is effective now.

Mr. Holden: No.

Mr. Teal: I mean the rates that you are acting under; the rates in effect prior to the advance. Do you claim they did not pay cost of operation?

A. Under the changed conditions as to empty car movement, I think there was very great question as to whether the 40-cent rate on lumber paid the cost when the business got above a certain volume, and it is very difficult to say just where that would begin.

Q. All of your rates on lumber were not a 40-cent rate, were they?

A. No.

Q. Then, I say, take your lumber traffic as a whole. Would you state that your lumber rates as a whole were remunerative or not remunerative?

A. I think our lumber traffic as a whole, including the short haul business, paid the cost of service—if that is the question.

Q. Well, that wasn't just the question. Would you wish to be understood as testifying, Mr. Woodworth, that on your roads the lumber business as a whole did not pay more than cost of service?

A. No, I couldn't say that.

Q. The lumber business has been a very large part of the business of the Northern Pacific during all of the years that it has been in operation since its organization, has it not?

A. You mean this Pacific coast lumber business?

Q. No; its lumber business as a whole?

A. Yes. It is the largest single item that we have. This Pacific coast business that is now in question has never represented more than 13 per cent. of our freight revenue.

Q. But it did represent about 13 per cent. of the freight revenue?

A. That is the highest figure it ever reached.

Q. Have any of the rates on your road during this same

period been less per ton per mile than lumber rates, on an average?

A. There may be some other rates in which we joined with other roads covering the transportation of coal and possibly some ore rates that would be less. But no important volume of business. And I could not name anything that was less. But I think there might be such cases.

Q. Could you make up a statement showing the average returns on your lumber in the same years that was made up by the Union Pacific yesterday, omitting rates on logs?

A. No. We do not make such statistics as those offered by the Union Pacific yesterday.

Q. You do have a very low log rate, do you not, in the west to the mills?

A. Yes, it is low.

Q. And that is hauling the logs to the mill and then having the lumber hauled away?

A. In most cases, yes.

Q. And are you familiar with the rates on lumber, an average rate per ton per mile, through Washington, on local business?

A. I never worked it out on the ten mile basis. I am fairly familiar with the rates.

Q. Would you call those rates remunerative rates?

A. Yes.

Q. This log haul has always entered into your statistics that you furnished on the lumber haul, has it not?

A. What statistics do you refer to?

Q. For instance, in this case there were some tables prepared showing the earnings on lumber, the rate per ton per mile, etc. The log haul was all figured in on that, wasn't it?

A. I don't think I know the statement to which you refer.

Q. Mr. Johnson prepared some statements; and don't you remember that on the examination of their Mr. Johnson that Mr. Prouty asked him if that did not include the haul on logs as well as on lumber, and that Mr. Johnson said it did?

A. I remember some such discussion, and I think he filed some supplementary statement, or made some explanation. I don't remember what it was.

Q. Mr. Johnson's statement, Exhibit 10, showed statements showing tons of lumber and other various products carried, and revenue on the same. Forest products cover logs, do they not?

A. Yes, sir, in the general classification.

Q. That is what I mean. So that in arriving at the rate

per ton per mile which you receive on lumber—logs being essentially a raw product—it would be fair to figure that in, would it, Mr. Woodworth, to arrive at a rate on lumber?

A. No. If we were discussing lumber rates, I think we should separate the rate on logs and lumber.

Q. There has been something said in connection with these roads, that they were hauling lumber at the lowest rates of any roads in the United States. Do you think that is true?

A. Yes, I think that is true, taking the total lumber business of the Northern Pacific Railroad, for instance.

Q. What I mean is this: Taking from certain lumber sections in the south, from what I suppose would be called the southwest, to lumber distributing centers such as St. Louis, Omaha, Kansas City and Chicago, on much shorter hauls than on the Northern Pacific, you say that your rates are lower per ton per mile than rates from such points as those?

A. I think they are generally. There are cases, as I remember, where the southern roads make some very low rates in order to reach distant markets and meet the competition of other sources of supply.

Q. Their haul is a much shorter haul on an average than the Northern Pacific's, is it not?

A. Yes.

Q. You say you think that coal and ore are carried at a lower rate per ton per mile than lumber, on your road?

A. No. I said I thought there might be indiivdual cases where they were carried at lower rates per ton mile than are charged on this Pacific coast lumber. In the aggregate, I think our coal business or our ore business pays very much more than this Pacific coast lumber.

Q. Do you recall anything else that you hauled over your road where you have made voluntary rates that are lower per ton per mile than on your lumber?

A. The most important item of that kind would be this Asiatic business, I suppose.

Q. I was eliminating the Asiatic business, because I understood that that did carry a very low rate?

A. I cannot think of any business important in volume that is carried at lower rates.

Q. Now, you heard yesterday the testimony of Mr. Munroe that on the Harriman roads they charged 5 mills per ton per mile as the cost of movement of company freight. I think I am correct in making that statement?

A. I did not understand him to say that it was the cost of movement necessarily. It was an arbitrary figure which

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they fixed as other companies have fixed it, as representing approximately the cost.

Q. Now, on your road what do you do?

A. I am not sure how we handle that.

Q. As a matter of fact, Mr. Woodworth, do either you or the Harriman system charge anything for handling company freight—charge yourself?

A. I think our company material is all billed free. I know that the purchasing agent, in making his estimates for the purpose of determining the point of delivery, figures our transportation at 5 mills. But that is used, as I understand it, simply for the purpose of determining whether it is better to take the delivery of a commodity, we will say at Portland, or buy it at St. Paul.

Q. Now, then, perhaps you remember when you were with the O. R. & N. Company. Do you remember whether company's material was handled free or not?

A. I do not.

Q. Now, if it is handled and a charge made at 5 mills, that would go into operating expenses, would it not?

A. Why, if that was the system, yes.

Q. If that was the system it would go into operating expenses. Then to that extent it would appear as an operating expense account, which would increase the amount of the operating expenses by whatever amount that 5 mills on the freight carried would figure up?

A. That would be true if they billed everything and charged it up in that way.

Q. That is what I mean. In handling this company freight in this 5 mills it is figured that way. Does that include all the small movement and the loading and unloading and handling of the freight by the company? Is that all included in the 5 mils, or is there a further charge made for that?

A. Why, if they used that arbitrary figure that would include everything. I am sure our road does not handle it that way. I do not think we make any account of the transportation of our material and supplies, because if they were charged against operating expenses they would have to be credited to something, and I know there is no such credit to our earnings.

Q. Mr. Woodworth, can you tell the court what particular service or charges go to make up the actual cost of movement?

A. Why, no, I could not state them, because while there are certain factors that are constant and must be recognized

in connection with the movement of every shipment, there are others that depend entirely upon the conditions.

Q. In your study of railroad operation have you never seen any tables prepared by experts and railroad men which purported to give the cost per ton per mile for handling freight?

A. Oh, yes, a great many of them.

Q. In all these tables have you ever seen any table that figured as high as 5 mills per ton per mile?

A. Why, yes.

Q. You have seen many of those?

A. I think so.

Q. Now, the various factors that enter into it are station service, train service, engine service, contingencies, maintenance of equipment of road and structures, and general expenses. That would make up the operating account, wouldn't it?

A. Well, it would depend entirely on whether you were estimating the cost of handling additional business or discussing the question as to what distribution should be made of all the expenses of the railroad, as between the different commodities and different movements of freight.

Q. How long have you been in the railroad business, in handling traffic?

A. I have been in the railroad business thirty years.

Q. Now, Mr. Woodworth, will you state what in your opinion, the cost—actual cost now—of handling traffic per ton per mile is?

A. No, I couldn't answer that question.

Q. Never have been able to determine in your thirty years of service, with any degree of satisfaction, so that you could even give an opinion that you would state was absolutely your opinion, as to the cost of handling traffic per ton per mile, on an average?

A. No, I wouldn't attempt any more in that connection than to estimate the cost of handing some particular item of additional traffic.

Q. Do you handle any traffic over your road at a loss, that you are aware of?

A. Yes, I think we do.

Q. For instance, what?

A. I don't think of any item just at this time. I have thought that this Asiatic business probably did not return the cost of service,—did not directly return the cost of service, and, as I said before, when this east-bound lumber busi-

ness got above a certain point, I have always been doubtful as to whether that returned the cost of service.

Q. Do you carry any rice over your road from Louisiana to coast points?

A. Yes.

Q. What rate do you make on rice, and what route does it take?

A. I don't remember the rate. It moves from New Orleans, and the rate was originally fixed by the Sunset Route to San Francisco.

Q. That is correct.

A. And we make the same rate from New Orleans to Portland and Seattle in connection with the general adjustment of rates, which makes San Francisco and those north coast points common.

Q. What in your judgment is the rate on that per ton per mile as compared with the lumber rate, less or more?

A. I don't remember the rate. Do you know?

Q. Yes. The rate is 55 cents.

Mr. Dillard: Which rate now, Mr. Teal?

Mr. Teal: He says it is over yours. I am going to give some figures over your road.

Mr. Dillard: I mean per ton per mile rate.

Mr. Teal: I say, this is the rate over yours, and he has given the same rate over his. He can figure it up.

Mr. Dillard: The mileage is different.

Mr. Teal: I understand.

The Witness: If the rate is 5 cents on rice from New Orleans to Portland and Seattle, why, obviously it represents the ton mile rate less than we earn on the lumber.

Q. Now from Lake Charles, Louisiana, by the Kansas City Southern, U. P. to Granger, the Oregon Short Line to Huntington, and then in on the O. R. & N., the rate is 3.70 mills per ton per mile, do you think they were losing money on that absolutely?

A. It would depend entirely on how their traffic would balance east and west bound, other conditions than—

Q. I am speaking now of the absolute cost per ton per mile. I am not speaking now of whether they are making money out of it; I am speaking now as to whether they would get back that cost on it.

A. Well, I think it would depend on these conditions that I refer to.

Q. Then, the conditions enter very largely even into the ton mile rate, don't they?

A. Into the service cost.

Q. Now, take on corn; you ship considerable corn from Omaha, Nebraska, and from Kansas City to Portland, Seattle, and those points, don't you?

A. Yes. The business is not large in volume. A few hundred cars a year.

Q. On those cars do you get absolute cost of service out of that?

A. Yes, I think we do.

Q. Now, then, how does that rate compare with lumber over your road on a per ton per mile basis?

A. As I remember it, the rate on corn is 50 cents from Kansas and Nebraska points, and the loading is usually very heavy. They load the cars to capacity.

Q. Then, as a matter of fact, the loading of a car and the carload earning is a much more important factor than the rate per ton per mile, isn't it?

A. Well, it is very important in estimating the cost of handling the business.

Q. Then, if there is a carrier of business that loads heavily, has but few terminal expenses, is not fast in movement, no particular risk attendant on it, it is loaded and unloaded by the shipper and by the consignee, and substantially all that the company pays on carload business is the haul at a very low rate, that business could be, under proper conditions, a profitable business, couldn't it?

A. As I say, those things enter very largely into the question of cost; and such business could be handled at smaller cost than other business which did not load heavily and require greater dispatch.

Q. Corn is a much more expensive commodity; that is, a carload of corn would be very much greater in value than a carload of lumber, wouldn't it?

A. No.

Q. A carload of corn wouldn't be?

A. I don't think so.

Q. How many cases to a carload of corn?

A. Oh, I thought you were talking about field corn.

Q. No, no; I am speaking of canned corn.

A. Oh, canned corn. I have given you the wrong rate, if you are talking about canned corn.

Q. I don't think you have, have you?

A. Yes.

Q. At any rate, you gave a corn rate. What corn rate were you giving?

A. I meant corn shipped from Kansas and Nebraska points, field corn, shelled corn.

Q. That is all loaded in box cars, isn't it?

A. Yes.

Q. You could not load that on flat cars?

A. No.

Q. And the rate per ton per mile on that is a very low rate, is it not?

A. About the same as the lumber rate.

Q. Now, you take coal from Duluth, Minnesota, or points of that character, to the Pacific coast points; how does that rate compare with the lumber rate?

A. There is practically no movement of coal from eastern terminals to Pacific coast terminals.

Q. Then, we will take from the middle west, like Sioux City, Iowa, and in through there. Is there no movement in there?

A. No coal movement.

Q. Why were the rates put in on carloads, then?

A. There have been a few carloads of anthracite coal shipped to the Pacific coast terminals. A very little of it is used, as you know, and that usually comes by water. For instance, when we used Baker heaters in our passenger cars, we used to buy our antharcite coal at Tacoma, from the Pacific Coast Company, and they brought it around in vessels from New York or some other loading point; and as I remember it, we have a rate on coal from Duluth to the Pacific coast terminals, but I don't remember that we ever carried any under it.

Q. Now, let us take cement. There is a rate on cement from Colorado and South Dakota, and Kansas City and Chicago to coast points, is there not?

A. Yes, sir.

Q. How did that rate compare with the lumber rate per ton per mile?

A. In the aggregate the cement pays very much more than the lumber. We have some rates to Pacific coast terminals,—rates made necessary on account of the competition of imported cement and cement from California,—which are very low; some of them lower than the lumber rate.

Q. You understand I am not criticising either the reasons, because the reasons are all good—the only purpose of this, to be entirely frank with you, is to have the record show the facts,—that is, that there are a number of commodities which are carried at a lower rate than the lumber rate, and much

lower than 5 mills per ton per mile. For instance, you have a 35 cent rate in from Denver by the Burlington to Billings and then over the Northern Pacific, 1884 miles. That rate is 35 cents. That equals a rate per ton per mile of 3.71. Would you say that you did not get back the actual cost of service out of that rate?

A. I think we do get back the cost of service, because that business takes the place of an empty car haul, the preponderance of our traffic being east-bound, and I think you will find all of these rates of the kind you describe are west-bound rates, and they represent our efforts from time to time to create business to make loading for these cars which would otherwise be hauled empty, west-bound.

Q. Now, you are familiar with the reasons given by Mr. Hannaford for the advance in lumber rates over the Northern Pacific, to the effect that it was on account of the empty car haul?

A. I don't remember just what he said, but that was one of the important reasons for it.

Q. In this letter of his he stated: "We believe with the proposed advance we can handle empties west at least up to our ability to handle loads east-bound on our line." Now, would the advance in rates, in your lumber rates, enable you to haul empty cars west for the purpose of handling lumber?

A. If all of the cars used for the lumber east-bound had to be hauled empty the whole distance west-bound, I should say no.

Q. Do you think there ever was a car hauled empty the entire distance of that road to haul lumber east?

A. Oh, a great many of them.

Q. Kirbyville, Texas, Beaumont, Texas, Center, Texas, and down through there, are producing lumber points, are they not?

A. I am not familiar with that country, but I have heard of them as lumber shipment points.

Q. And St. Louis, Missouri, is a distributing center for lumber, isn't it?

A. Yes, sir.

Q. The rates over the Lexington Junction and Wabash Railroad and other railroads to St. Louis, from that point, are 18 cents, and the highest millage per ton per mile is 3 mills from those four points and the lowest 2.7? Do you think those roads are getting back cost of service?

A. Why, that would depend entirely on the conditions under which they handle lumber. In a general way, I under-

stand those roads have a very large north-bound movement of empty cars, the cars having gone to Gulf ports loaded with grain; and if they can work that lumber north as against the south-bound grain traffic, I think they might get their money back.

Q. Do you think that is the case with the Illinois Central?

A. I have understood that was the case with the Illinois Central.

Q. Then, its traffic is not so evenly balanced?

A. I think the north-bound lumber movement on the Illinois Central takes the place of what would otherwise be an empty car movement, because they have a very large south-bound grain traffic.

Q. Lumber City, Georgia, Empire, Georgia, Bagsley and Brunswick, Georgia, are a lumber producing section down in Georgia?

A. Yes.

Q. And Cairo, Illinois, I understand, is also a distributing point for lumber?

A. It is more of a rate-basing point.

Q. Now, via the Chattanooga, Grand Junction and Illinois Central Railroad, at the time these tariffs in question were in effect, there were rates from the points I have mentioned over the roads I have mentioned, the highest being 3.97 mills per ton per mile and the lowest 3.31 mills per ton per mile. Do you think they got back cost of service?

A. From what I know of the conditions in connection with that haul I should say it was very doubtful.

Q. Now, without going into a large number of these illustrations, you would not want to be understood as saying, would you, Mr. Woodworth, that 5 mills fairly represents the actual cost of moving traffic over a properly constructed, property operated, modern railroad in this country?

A. You mean the whole business of a railroad?

Mr. Holden: Mr. Teal, you know Mr. Munroe very carefully pointed out to you that he was speaking about rates west of the Missouri river, and you were asking him about the Chesapeake and Ohio cost in regard to this 5-mill proposition.

Mr. Teal: I am not trying to—

Mr. Holden: No, but your questions to Mr. Woodworth talked about all railroads in the country. Now Mr. Munroe told you very carefully he was not dealing with the roads in

the country as a proposition, but only the roads west of the Missouri river.

Mr. Teal: Mr. Munroe didn't even state over his own road it was that, because I don't think he would.

Mr. Holden: No, I don't think he has put the subject at all in the light you have been putting it to Mr. Woodworth, but he did limit his expression—

Mr. Teal: The reason I want to be a little particular about this is, that this is going to a court, and I think a court has a right to rely upon these gentlemen who have spent the time they have on these matters; that if they have got the information which I think they possess, that we get it fixed as nearly definite as possible. Now, the question I am asking Mr. Woodworth is this: If, in his opinion, the cost of moving traffic over roads such as the Northern Pacific, the Union Pacific, the Great Northern (now I am speaking of actual cost) would average 5 mills per ton per mile.

A. The average cost of handling the whole traffic of any one of those road would doubtless be considerably more than 5 mills. Each one of them might have particular items of traffic which they could handle for a cost less than 5 mills. As I have said, it depends entirely upon what is the commodity and where it moves and under what conditions.

Mr. Dillard: He was speaking so low I did not catch his answer. Did he say the average cost would be more than 5 mills?

Mr. Teal: Yes, he said that.

The Witness: Of the total traffic.

Mr. Dillard: That is what I understood.

Q. Now you take the cost of moving freight, such as lumber, about which we are speaking now. Do you think that costs 5 mills per ton per mile to move? I mean as it is moved.

A. You mean this Pacific coast lumber?

Q. No, the lumber on your road—not any Pacific car.

A. Why, if I answer that question I want to answer it correctly, and I don't see how I can because I do not think anybody can tell how much it costs us to move the lumber on the railroad——I mean all of the lumber we move. They could take—

Q. Now, take your grain rates through Minnesota and Wisconsin into St. Paul or Duluth. Are they lower or higher than your average lumber rate?

A. On a ton mile basis they are higher.

Q. They are higher?

A. I think.

Q. Is the haul shorter or longer?

A. The average haul on grain is much shorter than the average haul on lumber.

Q. Now, as to the cost of handling grain or coal or ore: how does that compare with the cost of handling lumber over railroads?

A. Given the same length of haul, the cost of handling grain and ore would be less than the cost of handling lumber because it loads more per car, on the average.

Q. Then, it would be the return on the carload that would make it?

A. Yes; that is a very important item.

Q. Now, I am getting back to the question of cost. In this case Mr. Elliott testified that he thought the cost of handling grain, the cost of handling coal, the cost of handling ore or any of those heavy commodities is no higher than the cost of handling lumber. Now I am not speaking about what net return you could get out of it, but I am speaking of the actual cost of movement, of handling the stuff.

A. If anything, I think the cost of handling grain and ore per ton per mile for the same distance would be less than the cost of handling lumber because of the difference in the loading per car.

Q. Now, you are familiar with the lumber rates from Omaha to Chicago?

A. I don't remember what is the rate from Omaha to Chicago. Our business is all handled under through tariffs. I am familiar with the divisions.

Q. What is the division, then? That is the part I meant! Don't they get 10 cents?

A. The lines east of the Missouri river take the same revenue that is accepted by the lines south of St. Paul on Chicago business.

Q. How much is that?

A. 10 cents.

Q. Those roads are always glad to get that business, aren't they?

A. Well, it is a part of their general arrangement with the western lines, and after a rate is published, why, everybody gets after the business that is covered by the tariff.

Q. You are familiar of course with the fact that their

agents out west solicit this Pacific coast business on lumber?

A. Yes.

Q. The distance between Omaha and Chicago is about 500 miles, isn't it?

A. Approximately.

Q. That is a rate of about 4 mills per ton per mile, isn't it?

A. Yes.

Q. Are you familiar with the tonnage movement of lumber throughout the country as compared with other freights?

A. I can't say that I am.

Q. You don't know, then, what proportion of the total carriage of lumber to all the other freights carried? You never looked into that?

A. No. You mean on different railroads?

Q. Yes; just take the country as a whole.

A. No, I never made any examination of the figures.

Q. Do you know what the carrying of bituminous coal is compared to lumber?

A. No.

Q. Do you know anything about what the earning per car on coal is, as compared with the lumber?

A. I never had occasion to look up the figures.

Q. Would you say it was more or less per car?

A. On what roads?

Q. On any roads with which you are familiar.

A. I don't know.

Q. On your road the same minimums are in effect as are on the Harrison roads, are they not, on lumber?

A. Yes.

Q. That is, the general minimum. And these minimums have been increased, I mean during the past, or say within the past ten years?

A. The minimum weights are worked out on an entirely different plan now, and under that tariff some of them were really decreased, but the minimum weight now is according to the capacity of the car.

Q. Well, but as a matter of fact all the companies are building larger cars, aren't they, Mr. Woodworth?

A. Yes.

Q. And you would not want to leave it a matter of doubt, would you, that the earnings per car today are greater than they were five years ago?

A. That is true. And the cars are much heavier, too.

Q. That is true, but I am speaking of the earnings.
A. That is correct.
Q. You testified at Washington in this case?
A. Yes.
Q. You heard the testimony, yesterday, of Mr. Munroe as to how these rates were agreed upon? I am speaking now of the rates in the new tariff which is in controversy here.
A. Yes, sir.
Q. And his statement that it was a result of agreement and consultation between all the various western roads is correct, isn't it?
Mr. Holden: He said it was the result of conferences.
Mr. Teal: What is it?
Mr. Holden: Mr. Munroe said, if I may correct you, that the rates were the result of conferences.
Mr. Teal: What have I said now?
Mr. Holden: You said "agreements." We know what you are driving at, but you may as well drive straight.
Q. Well, the result of conferences between the various traffic departments of the roads.
A. Yes. I think I made a statement covering that when I was on the stand at Washington.
Q. And these conferences led to an agreement that they would be published, did they not?
A. They led to the publication of these tariffs.
Q. Who gave the instructions about publishing the tariffs?
A. Each road gave its own instructions.
Q. Was it agreed as a result of these conferences that these instructions would be given?
A. It was not agreed that they would be given. For instance, we decided that we were going to change our rates and advise the other roads to that effect, and they decided to change their rates. The change in the lumber rates was made just as changes are usually made in important rates of that kind.
Q. Are rates usually fixed over your roads—I am speaking now of the western roads—in the same manner that the lumber rates were fixed—the lumber rates in question here?
A. These through rates, like our transcontinental tariffs, are made in much the same manner. We meet and discuss the conditions; and whenever a tariff is re-issued, if questions come up between these general conferences about particular items, why, we go ahead and instruct Mr. Countess to change the tariff.

Q. Who is Mr. Countess?

A. He is our agent in Chicago—agent of all these roads for the purpose of publishing these tariffs.

Q. He is the joint agent of all the roads?

A. The joint agent.

Q. Now, I believe you testified that the general result of the operation of your road—I am speaking now of the returns—has been fairly remunerative for a number of years?

A. I think so.

By Mr. Walter:

Q. Do you know who first suggested this increase in lumber rates?

A. It would be hard to say, because it has been under discussion for all the years since the 40 cent rate was first made to St. Paul.

Q. At the time it was about to crystallize in the increase who was first active in the increase?

A. Why, I guess we were. We said as much about it as anybody.

Q. Was that because you felt that your total gross revenues or your total net earnings ought to show a greater amount?

A. No; so far as I am concerned it was because it seemed very plain that this increasing tonnage of lumber under the 40 cent rate was not paying the cost of service.

Q. It was not because you needed on the whole more money, but rather because the particular traffic did not bear its proportion of the returns to the company?

A. Well, that was as far as I went in my consideration of it.

Q. Do you know whether higher up in the organization of your company or the Greatern Northern—and by that I mean the president or an equivalent official—concluded they needed a little more money and where one went down raised the tariff on what could best stand it?

A. Oh, no, there was nothing of that kind. I might say this: That I have frequently heard the opinion expressed that many of our rates were likely to be reduced—I mean our higher rates—rates on merchandise and miscellaneous traffic and as those reductions came along it was very important that we increase any abnormally low rates we might be making.

Q. In other words, as it became necessary to reduce high rates, that you would take that reduction in revenue and

raise the rates on traffic that could stand it so as still to keep your total revenues on an even keel?

A. If the higher rates were reduced and we were unable to raise some of the low rates, of course our average return would be lessened.

Q. So that really it amounts to this, that in order to preserve your gross revenues, where rates are reduced, you try to find some traffic which is abnormally low and bring it up to what it should bear in the total return?

A. Well, that would be wise and proper, but this change did not proceed from any such reasoning or instruction on the part of the executive officers.

Q. No, but it was anticipating what might be done in the future; is that correct?

A. Well, as an incidental reason, yes.

Q. So that as a commission, either state or national, or voluntary action on your part, reduced the abnormally high rates, you would still be getting that reduction back off of other traffic that you had raised?

A. That might be so.

Q. In other words, any reduction that is made by the Commission on one traffic is gotten back by raising it on another?

A. No, sir, because unfortunately it does not follow that because some of our high rates are reduced we will be able to increase some of our low rates.

Q. That is what you would like to do?

A. That is what we would like to do.

Q. How much does 1000 feet of average lumber weigh?

A. All the way from 1800 to 4000 pounds.

Q. Would 3000 be an average, speaking in round figures?

A. It is difficult to state that because it depends upon whether it is rough or dressed.

Q. Yes; but averaging the dressed with the rough lumber, it will average about 3000 pounds?

A. All the lumber we carry from the coast east-bound?

Q. Into St. Paul.

A. Oh, as a guess I would say that the average of all the lumber we carry would be about 2700 pounds. That is nothing but a guess.

Q. The rate into St. Paul is now 45 cents?

A. Yes.

Q. That is about $12.15 a thousand feet?

A. Yes. I assume you have figured it there.

Q. And prior to the increase from 40 cents it would be $10.80?

A. Yes.

Q. So that you have added to the lumber $1.35. That has resulted in an increased price to the consumer, I take it?

A. No.

Q. You think not?

A. I am sure it has not.

Q. Who pays that freight? Who does pay that rate, Mr. Woodworth?

A. Inasmuch as the western shipper sells all of his lumber in this territory at delivered prices, and those delivered prices are according to the competition he encounters, it would follow that any increase we made in the freight rate must come out of him. And of course it finally goes beyond the manufacturer and to the man who owns the stumpage. It gets its final reflection in the cost of the logs.

Q. Now, you think that instead of adding the $1.35 on to the cost of the lumber at St. Paul, it would rather be subtracted from the amount they pay the owner of the standing timber?

A. It certainly would.

Q. Now, the rate to Chicago is 55 cents, isn't it?

A. Yes, sir.

Q. And that would amount to $14.85 on a thousand feet of lumber at Chicago?

A. Have you figured it?

Q. Yes.

A. Yes, sir.

Q. Now, to that you have added $1.35, by reason of the 5 cent advance the Commission allowed?

A. Yes.

Q. You did undertake to add 10 cents?

A. Yes.

Q. Which would make $2.70 a thousand?

A. Yes.

Q. Do you think if that full increase had gone into effect, of $2.70, that the consumer here in Chicago would not have paid any of that amount?

A. I don't think he would; because it would not change the price of lumber in Chicago, since lumber from other sources of supply fixes the selling price in Chicago. It would change the price of lumber at a point where the Pacific coast was the only source of supply.

Q. Now, in making the increase you took into considera-

tion the fact that the white pine district was practically depleted, didn't you?

A. We took into consideration the fact that the exhaustion of the white pine and the general increase in the price of lumber in this territory made it no longer necessary for us to make abnormally low rates to permit the Pacific coast manufacturer to sell his lumber in these markets.

Q. Now, when the white pine was depleted, the other lumber raised in price, didn't it?

A. Yes.

Q. That would be the effect of it?

A. Yes, sir. The tables show that there was an increase of nearly 100 per cent. in the course of ten years.

Q. Then as the white pine became depleted, the consumer paid more for his lumber, didn't he?

A. Yes.

Q. And on account of that depletion you added $1.35 or $2.70, as it would have been if the Commission had not cut the increase in two here in Chicago,—wouldn't that $2.70 be shown fully in the price to the consumer?

A. No, sir.

Q. You think the competition of white pine at 50 cents would be as efficient, and no less efficient than at 60 cents?

A. The competition of white pine and yellow pine from the south; because, at all times the Pacific coast manufacturer has made the delivered price which was necessary to sell his lumber; he has got the highest price he could.

Q. Now, then, if the white pine was being depleted, what about the yellow pine? You heard Mr. Munroe's testimony yesterday about that. Do you agree with him that Chicago is not now much of a market for yellow pine?

A. No, I don't agree with him; I think he is mistaken in that.

Q. So that is not one of the reasons,—

Mr. Dillard: Excuse me, Mr. Walter, I don't think he said that. He said that Chicago did not get much yellow pine, as he understood, from east of the Mississippi river, but he was not particularly familiar with the white pine situation; but from Mississippi and Georgia and Florida his understanding was that Chicago got its yellow pine from there.

Mr. Walter: I understood Mr. Munroe to say that as a result of the lessened amount of yellow pine which came to this market, and of white pine, that the traffic would bear a higher rate.

Q. Now, was that one of the assumptions that you had in fixing the rate in Chicago?

A. I don't remember that Mr. Munroe said just that, and in any event we did not recognize any such condition as that in changing these Pacific coast rates, because the contrary is true. The yellow pine shipments to markets like St. Louis and Chicago and this whole territory have been increasing rather than decreasing.

Q. Now, whatever might be the case as to Chicago,—at least as to St. Paul,—you did consider the factor of the white pine being removed?

A. Yes.

Q. In fixing the rate?

A. Yes.

Q. Now, whatever price is paid at Chicago to the lumbermen for a thousand feet of lumber, $14.85 of that is paid to the carrier, in effect?

A. Assuming the weight that you have used. Of course there are many kinds of lumber that do not weigh more than 2,000 pounds per thousand feet.

Q. Yes, but taking as an average 2700 pounds?

A. And the further you go east, why, the smaller would be the average weight per thousand, because the larger proportion of kiln dried or manufactured stuff would be shipped.

Q. A good deal of the rough green fir lumber that is used in Chicago comes from the Pacific coast?

A. No, very little rough green lumber is shipped from the Pacific coast to Chicago; in fact, practically none except long timbers.

Q. Does it reach St. Paul,—the Missouri river?

A. No green, common rough lumber comes even as far as St. Paul.

Q. Does any of the 4,000 pounds to the thousand feet reach Chicago or St. Paul?

A. No.

Q. The construction material, the long timbers weighs that, doesn't it?

A. Well, they weigh about 3300 pounds per thousand feet.

Q. And that would, of course, be greater than the 14.85 on the thousand?

A. Yes.

Q. You have a good deal of doubt in your own mind, haven't you, Mr. Woodworth, as to whether the lumber traffic does pay you nothing more than the cost of the service?

A. When our east-bound Pacific coast lumber business gets above a certain point, I am doubtful of it.

Q. Well, speaking generally of the situation as to your lumber traffic, you do have doubt as to whether that traffic pays you less than some profit over the cost of the service?

A. No; I am sure that our whole lumber traffic fully pays the cost of service.

Q. And something over?

A. Yes.

By the Master:

Q. Did I understand you to say that in promulgating this tariff in 1907 you calculated that the market was such that the consumer would stand the raise?

A. No.

Q. Did you calculate or intend that the producer should stand the raise?

A. As I tried to explain, it was our opinion that it would finally go through to the stump.

Q. You supposed, then, that the producer would have to stand this raise in rates?

A. Or the owner of the timber.

Q. Now, when a declining market sets in, who feels that first—the producer or the carrier?

A. Why, if the shipments continue by reason of the manufacturer reducing his prices, of course we don't feel it and he does.

Q. Now, what is the usual experience, if you know?

A. Why, I should say that the burden is usually divided.

By Mr. Walter:

Q. Now, then, what did happen in 1907 when this terriffic crisis came in the lumberman's affairs? Did the railroads share with him any of the ill effects, by reducing their rates?

A. We made no reduction in our rates.

Q. And that increase was coincident with the crisis. I believe that is what Mr. Munroe testified.

A. Yes, the decrease in the lumber business was first apparent along about May or June, and the situation became acute at the time of the panic in October or November.

Q. When was the notice of the increase published?

A. Why, the formal notice that was published—

Mr. Teal: No, the notice. When was it first given out to the public? Wasn't it early in the spring of 1907?

The Witness: Oh, there was a newspaper rumor as early as May.

Q. Well, it was something more than a rumor; it happened to have a substantial basis?

A. No, because we hadn't prepared the tariffs at that time.

Q. You had decided on the increase in rates?

A. Yes, in a general way.

Q. So that that was the first notice to the lumbermen as to the increased rates?

A. We made no announcement of the change, and gave no confirmation of any of those rates until much later.

Q. When was it first given to the public authoritatively,—substantially authoritatively,—that those rates were to be increased?

A. I think it was, as I remember, early in July.

Q. Do you agree with Mr. Munroe that the market was then top heavy, that the prices of all were such as to lead to reasonable business prudence, giving you the opinion that there must be a decline?

A. That was the general opinion. I know that a good many building operations were postponed, because the interested people said they thought prices of material were too high; a man would be foolish to load himself with a fixed charge based upon the then existing high prices and be obliged later to compete with a man who had built a warehouse, or other structure, at the less cost.

Q. And it was with that knowledge that these rates were increased?

A. That had nothing to do with the increase.

Q. No, but you had that knowledge at that time?

A. Why, yes.

By Mr. Wimbish:

Q. Mr. Woodworth, you have testified that the white pine supply of timber has become greatly depleted. You are doubtless also familiar with the fact that the yellow pine cut will be limited to a short period of years, say ten or fifteen or twenty; so that the only source of supply of any magnitude remaining in this country is in the Pacific coast northwest. Now, those facts are pretty well known to the people at large and to the holders of timber in the Pacific coast northwest territory. Now, if that is true, is it not to be expected that the value of that stumpage will necessarily increase?

A. I think there are some owners of stumpage in Oregon and Washington who would not follow down a declining price for the reason you state.

Q. Well, I ask if it is not to be expected? Does not every

thinking man know that the value of that stumpage must necessarily increase as these other sources of supply become depleted, and competition to that extent loosens?

A. I think that is so. But there is always a sufficient number of owners who, for one reason or another, are willing to sell or cut their timber to meet the demand, on the basis of whatever may be the market price. That is, we think so.

Q. Is it not true that the owners of this stumpage in Washington and Oregon, as a rule, are men who are able to hold their timber? Is it not owned largely by men of wealth and by corporations able to tide over a period of depression in prices?

A. Very many of them are, but of course there is a large holding by individuals who are not so strong.

Q. Then, if this tax represented by this advance is borne by the stumpage owner, then you force him,—I say "you," I mean the conditions for same,—to sell his stumpage for less than its real, true value?

A. Well, not less than its present value.

Q. And if he cannot or will not, bear the reduction in price brought about by the increase of rate, then the manufacturer, or dealer, must bear it, must he not? You have testified the consumer would not have to bear it, because of competitive conditions?

A. Why, certainly if the man who owned the timber and sold the logs would not change his price, why, the manufacturer would have to bear it.

Q. Do you not know, as a matter of fact, that the price of stumpage has not decreased in Washington and in Oregon? I am speaking now of the rule, as an average.

A. No; I understand it had held about the same, except in individual cases.

Q. Therefore you have really levied this advance, which I will call a tax (not offensively) upon the manufacturer? That has been the result of it?

A. Of course the manufacturers out there to a very great extent own their own timber.

Q. That will not change the question, however, because stumpage value is the same, whether owned by one man or another.

A. Why, of course, one or the other must absorb the increase in the freight rates; there is no question about that.

Q. Then, this increase was a direct sharing in what you supposed to be the prosperity of the lumber manufacturer.

A. I have never thought of it in that way. It always seemed to me that we were in the position of having assisted the western manufacturer to make the necessary delivered price down here when he had gone as far as he could and could not reach these markets unless he did have a lower rate. Now, those conditions changed. Increase in price of timber down here was anywhere from 50 to 100 per cent. higher than when we made the rate. Therefore, we say to him, "You no longer need the assistance of an abnormally low rate, and ought to let us get a little more for our service."

Q. Now, that increase in price was due to the lessening of competition?

A. Yes.

Q. And therefore to the increase in the stumpage value, was it not, Mr. Woodworth?

A. In the other districts?

Q. Yes.

A. Yes.

Q. In other words, he could get a larger price for his delivered product in Chicago, because the value of the stumpage had gone up in all districts that shipped into Chicago?

A. That is correct.

Q. You sometimes voluntarily reduce rates, do you not?

A. Yes.

Q. What considerations induce you to reduce a rate in the absence of competition? I understand if a lower rate is made to a competitive market, why, you have to lower your rate. Now, in the absence of competitive conditions, what induced you to lower a rate?

A. To create or stimulate business.

Q. Then, as long as traffic will move freely under a rate, you do not voluntarily reduce that rate?

A. No.

Q. So that if the traffic will bear it you regard it as rea sonably low?

A. If the rate is reasonable in itself.

Q. What do you mean by reasonable in itself, Mr. Woodworth?

A. Well, of course, there are many measures of that.

Q. Can you give me one standard by which the reasonableness of a rate in and of itself can be tested?

A. No, I cannot,—no rule or standard that would apply to all rates.

Q. What is your standard? How do you test the reasonableness of a rate?

A. Why, I cannot test it until I know the commodity to be moved, the points between which it will move, and the time and volume in which it will move.

Q. A rate may be reasonable, relatively and comparatively, but is there any such thing as a rate that is reasonable in and of itself, in other words, if you are given free rein to make rates over the Northern Pacific, in the entire absence of competitive conditions, both market competition and carrier competition, could you make rates on a particular commodity and say that those rates are just and reasonable in and of themselves?

A. I think a man can come pretty near to it.

Q. Well, what would be the standard, then?

A. Well, it would be necessary for him to fix the rates on each commodity and between all of the different points, with respect to these conditions. But when he got through he ought to be able to say that he had worked out a system of just and reasonable rates, if, as you say, he had a free hand. But it would, of course, be a matter of judgment.

Q. So that there is no test that you know of,—no standard? It is a relative proposition always?

A. There can be no general rule.

Q. Now, in making a rate on a particular commodity, do you consider the value and character of the commodity?

A. To some extent. I don't think it is a very important factor, though.

Q. Do you consider the weight as compared with the bulk?

A. Yes; that is much more important.

Q. Do you consider the length of the haul?

A. Yes.

Q. The volume of the traffic?

A. Yes.

Q. The risk in transit, the risk of loss or damage?

A. Yes. That is not so important as the other items.

Q. The terminal cost of handling, loading and unloading?

A. Yes.

Q. Matters of that kind. Then, of course, you consider competitive conditions?

A. Yes, sir.

Q. Is there anything else that you consider in the making of a rate? Do you consider the prosperity of the shipper or the industry?

A. Just as you said a few moments ago. We aim to fix the rates on a basis which will permit a free movement.

Q. Your rates do not vary according to fluctuations in the price of the commodity? You sometimes make advances because you think the industry is prosperous, as you did in this case; but you make no effort to adjust your rates to the rise and fall of the market on commodities, do you?

A. Yes, rates are very frequently reduced, for the reasons you suggest. They spoke yesterday of the 45-cent rate that was made from Portland down into Kansas and Nebraska in 1893. That was made because at that time it did not appear that they could afford to pay any more; could not sell any lumber on any higher rate.

Q. But that wasn't exactly my question. I asked you if you made any attempt to adjust your rates to the rise and fall of the market. Now, let us take wheat. Take years when wheat is low. Do you reduce your rate because of the reduction in the price of wheat?

A. I think I understand your question now, and I would say, no, we don't try to follow the fluctuations of the market with our rates.

Q. And the mere fact that wheat may have gone up in price does not induce you, in and of itself, to increase the freight rate on the wheat, does it?

A. No.

Q. Then why do you apply that proposition to lumber?

A. We have no grain rates which we do not regard as normal rates. If we had previously made abnormally low rates in grain, because the farmers were poor and the price was low, why, then, when the price went up and they became able to pay a normal rate, we would increase the grain rate.

By Mr. Teal:

Q. There are just one or two questions that I want to ask, which are brought out by those that I did not understand before. Do you consider, Mr. Woodworth, that a freight rate to transport manufactured goods is a cost of manufacture that ought to be paid by the consumer, or is it a cost which should be paid by the producer as an element of the cost of the product he makes?

A. I think that depends entirely upon the market in which it is sold. If the market is exclusive to a given source of supply, why, generally speaking, any change in the freight rate is reflected in the price to the consumer.

Q. That is not the question I asked. I asked this question: Whether, as a matter of economics,—as a matter of business,—a freight rate that is paid is a part of the cost

to be borne by the consumer on that product, or is it a charge against the manufacturer?

A. Well, I say again that it depends entirely upon the conditions.

Q. You think, then, that there is no principle of economics that fixes that at all?

A. I don't see how there could be any rule.

Q. Would you call the tax that is levied by the State of Washington against these mills a part of the cost of manufacture?

A. Yes, I think that would be true.

Q. And would you call the wages of the men around the mill, who haul the lumber to the railroad, a part of the cost of manufacture?

A. Yes, sir.

Q. But you don't call the tax that is levied by the carriers a cost of manufacture at all, in this instance?

A. It depends on whether the manufacturer pays it, or his customer.

Q. And fixing this rate,—this advance,—what you had in mind was that the cost would come out either of the manufacturer of the lumber or the owner of the stumpage, is that correct?

A. I think under the conditions that exist in these eastern markets, that would be true.

Q. No, I am speaking about the basis of it.

A. What do you mean by "the basis"?

Mr. Teal: Just read the question.

(Former question read.)

Q. I would like to have an answer to that question, and then explain it. If that was the case, it is very simply answered.

A. The change in rate did not turn on the question as to whether the increase would be borne by one party or another concerned in the transaction.

Q. That I understand; but in figuring on this advance, you have stated that the cost must come out of one or the other,—either the manufacturer or the owner of the stumpage. Now, I ask you whether that was what you considered in making this advance?

A. I expressed the opinion that it would work out that way.

Q. But what did you consider in arriving at the conclusion about the advance? That it would do that?

A. Why, incidentally, I think, we assumed that it would

work out that way; but our action did not depend upon that result.

Q. I understand. It was a matter of indifference where it came from, but when you speak of "we," of course you are speaking of the traffic men. You did assume that it would come out of either the stumpage or out of the manufacturer?

A. It had to come out of somebody.

Q. Oh, that is true.

A. And it seemed probable that the burden would fall upon one or the other of the two parties named.

Q. You mean by one or the other, either the stumpage or the manufacturer?

A. Yes, sir.

Q. Now, then, you think that is a proper basis upon which rates can be made?

A. Why, it is not a basis for rates at all.

Q. Do you think that is an element to consider?

A. It is an incidental effect of a change in rates.

Q. And if the incidental effect is to place the tax for the movement of a commodity upon the purchaser of that commodity, then you feel that that is a perfectly legitimate advance, for that reason?

A. Why, if the rate that we make is a legitimate rate.

Q. Even if it is a legitimate rate, do you think you can do that?

A. Why, yes; we are entitled to a legitimate rate.

Q. Then, if the profits of the manufacturer get again higher than you think they ought to be, do you think that you would have a right to make still further rates?

A. If our rate was yet abnormally low, yes.

Q. And do you think that you would have a right to increase this tax for carrying, until the manufacturer could not manufacture?

A. No, not at all; but as he became able to pay we would have a right to increase his rate until he reached a normal basis.

Q. Now, on the advance that was put in by the northern lines, and that the Commission allowed in part, would that pay a fair return on the carriage of lumber?

A. Up to the point where it did not involve an empty westbound haul of the cars, I should say yes.

Q. But I am speaking now as it existed—the condition that you are trying to meet. What I mean is, under the conditions as they existed, and what you were trying to meet, would

the rates that you established, in your judgment, have produced reasonable remunerations?

A. You mean the November 1, 1907, rates?

Q. Yes, the rates that you established?

A. With the present relation of east and west-bound tonnage, I should say yes.

Q. I was speaking of the way it stood?

A. Yes.

By Mr. Holden:

Q. Mr. Woodworth, I want to direct your attention to the language of the opinion of the Commission in one of these lumber cases No. 1327, Oregon and Washington Lumber Manufacturers Association against the Union Pacific Railway Company et al., in connection with the questions that were asked you regarding where the probable effect of this advance in rates would ultimately fall. On page 5 of that opinion is found this language: "After the announcement was made that the lumber rates were to be advanced, the price of logs fell off a dollar per thousand feet in the month of July, 1907. The next month the price dropped a dollar and a half; with a corresponding fall in the following month; making the total decrease from August to December $4 per thousand feet." That, as I understand, means that the price of logs to the manufacturer of lumber, between August and December, 1907, fell off $4 a thousand feet in the market on the Pacific coast. That is more of a decrease in the price of logs than the lumber advance advanced the cost of transportation to the manufacturer, is it not?

A. Very much more.

Q. The advance in the rate which the carriers asked, to St. Paul, was a 25 per cent. advance, and the advance in the rate asked to the Missouri river was 12½ per cent.?

A. Ten per cent.

Q. Well, it was an advance from 50 to 55 cents on the Missouri river?

A. Yes, sir. That would be 10 per cent.

Q. Well, 10 per cent. My arithmetic is a little lame. It has been said, and is frequently seen in the record in this case before the Commission, that the advance in the rate to St. Paul amounted to about $2.75 a thousand feet. I think that is the proper way to express it. This decrease in the cost of logs was $4 a thousand feet. So your statement seems to be borne out by the fact as found in this opinion, that the cost to the manufacturer of getting his logs to manufacture

into lumber, decreased much more than the added burden of the advanced rate in transporting lumber, is it not?

A. Yes, sir.

Q. Now, there is an exhibit offered by the complainants in this case, which was offered in connection with the testimony of Mr. Buehner, and it is entitled "Buehner Exhibit No. 1," and is found opposite page 102 in the brief filed for the complainants in 1327, by Messrs. Teal and Miner. It consists of a chart showing the relative price of yellow fir logs and the selling price of common lumber, in the years 1900 to 1907, inclusive. Directing your attention to that exhibit, does that not also show the same decrease, approximately speaking, in the price of logs that the Commissioner referred to in writing the opinion?

A. Yes; it shows that the price of logs went down with the price of lumber.

Q. And went down much more than the added cost in the transportation of the manufactured lumber, resulting from the rate asked by the carriers?

A. Yes.

Q. Is it not a fact, as shown by the record in this case, that over a period of three or four years, approximately stating it, the price of logs in the western market advanced even more than the $4 decrease referred to in this opinion, and was that not the subject of great complaint by the Pacific coast lumber manufacturers, in their journals and in their public utterances, which are shown by exhibits in this case, that the log prices were advancing beyond all reason?

A. Yes, sir; such statements were made.

Q. And are shown by exhibits in the record. I am asking these questions to connect up this testimony with the record in the case, and we will illustrate and argue that matter more fully to the master when the time comes to present our views on this phase of the record. You were asked about the 10 cent division accepted by carriers east of the Missouri river in transporting lumber or sharing in the transportation of lumber from coast points to Chicago. So that that may be clear, I wish you would state just how that comes about, or, if I may shorten the matter a little, I will ask you if my statement of the matter is not accurate. Lumber arrives in Chicago from the coast points via two main routes—one via St. Paul and the other via Omaha. That is true, is it not?

A. Yes, sir.

Q. It has already been testified here, and I think it is

a fact, that the division in the rate from St. Paul to Chicago is 10 cents, that is true?

A. Yes.

Q. And that that division results from the competition of lake vessels from Duluth and points near the head of the lakes to Chicago. Is that true?

A. Yes, sir.

Q. What is the rate on lumber to Duluth, as compared with the rate to St. Paul?

A. The same.

Q. Is there not that relation, generally speaking, in rates to Duluth and to St. Paul and Minneapolis?

A. Yes, sir.

Q. That is a fixed relation, is it not, and has been so for many years?

A. As to western rates, yes.

Q. So, with that relation in mind, the lumber may move to Duluth, and then by water to Chicago, at the low rates which are made by lumber schooners, and the carriers, in order to move lumber via St. Paul and via rail to Chicago, cannot obtain any higher rate than obtains through Duluth and the lumber transportation by water to Chicago, is that true?

A. Yes, sir.

Q. Now, in order to permit the movement of lumber through the Omaha gateway, and the use of the lines leading from the west to the Omaha gateway, and thereby open up more lines of transportation for the movement of lumber from the coast to Chicago, is it possible for the railroads leading from Omaha to obtain any different rate basis than this same 10 cent division that applies and is caused by the lake rates?

A. The through rate to Chicago would be based on the rate to St. Paul plus the 10 cent rate St. Paul to Chicago. That would fix the through rate via Omaha. Again, the question of the division of the rate is a matter of agreement. The lines east of the Missouri river formerly got 12 cents in the division of that rate, but, of course, the western lines have always taken the position that they ought to accept east of Omaha as low a rate as was accepted from St. Paul, and have done everything they could to force the lines east of Omaha to accept that rate, and finally succeeded.

Q. And is it an accurate statement to say that the 10 cent division between Omaha and Chicago, on this lumber traffic, is a direct reflection of the St. Paul and Duluth situation that I have referred to?

A. Yes, that was the argument we used with the lines east of the Missouri river.

Q. And that was the argument which they accepted, and has been the basis for a considerable period of time?

A. Yes, sir.

Q. Some questions were asked you in reference to the Illinois Central Railroad, and you stated that there were a great many empty cars made in the southern part of that system, which came north loaded with lumber. What has been the current of the grain movement to gulf ports over a line of that kind in recent years?

A. An increasing proportion of the grain produced in the Middle Western states has been going to gulf ports as against the Atlantic seaboard. It formerly went very largely to Atlantic seaboard points.

Mr. Wimbish: While I don't like to object to any testimony, yet I don't think the witness is personally familiar with tonnage on the Illinois Central, and there is very much better evidence in the reports of the company itself.

Mr. Holden: Well, I don't offer him as a witness on any specific fact; but I think it is a matter of general traffic knowledge that the increase in movement of grain to the gulf ports has been going on, just as he states. I think we all know the fact.

Mr. Wimbish: And we also know, Mr. Holden, there has been a very great increase in imports coming from New Orleans north to Chicago.

Mr. Holden: Yes.

Mr. Wimbish: All of those facts can be gotten from the report, and they cannot be gotten from a witness of this kind.

Mr. Dillard: Well, a report is secondary evidence.

Mr. Teal: Well, call your witness. You have witnesses.

Mr. Holden: I think probably you opened the subject on this examination.

Mr. Teal: No, if I remember rightly in your opening statement you spoke of how evenly balanced the Illinois Central was.

Mr. Holden: We will probably cover that before we get through, but I say in the examination of this witness you opened that subject.

Mr. Teal: I don't care anything about the rates. Mr. Woodworth don't generally testify to what he don't know, so you can ask what you want. I don't care.

The Master: Just note the objection, and we will hear the testimony.

Mr. Holden: All I am seeking to show is the fact, as I understand it to be, that in recent years the movement of grain has very largely increased from the middle western grain producing sections of the gulf ports.

Mr. Teal: Pardon me, Mr. Holden. Wouldn't it be better instead of telling the witness what you want him to say, to ask the question whether he knows it, and not state what you already know.

Mr. Holden: He has already stated it.

Mr. Teal: Then the discussion is ended.

Mr. Holden: The objection came after he made the statement. We are using up a good deal of language here which means nothing, perhaps, in the way of objection.

The Master: Well, it is in the record.

Mr. Wimbish: There is another idea I want to suggest now on that line, to show why this character of testimony ought not to come in in this form. We may be called upon to show that in the Tift case the officials of the Illinois Central and the other southern lines made the same contention there that they have made here, that the empty car movement was south. Now, I don't want to go all over that stuff.

Mr. Holden: Well, that was four or five or six years ago, when that hearing was held, and my questions related to a time after that hearing.

Q. You were asked a question or two about rice rates from Louisiana points to the Pacific coast. Are there any competitive features in connection with a rate of that kind to the coast points?

A. Yes. The southern rice meets the competition of rice from China and Japan in the Pacific coast markets.

Q. That rice from Asiatic points comes, of course, to the Pacific terminals in various forms of water transportation, and at widely varying rates, does it not?

A Yes, sir.

Q. Is it your understanding that that competition, then, has a controlling bearing on the rate on Louisiana rice to Pacific coast harbor points and that vicinity?

A. Yes, because it limits the price at which the rice from Louisiana, for instance, can be sold in those markets.

Q. And therefore limits the volume of the rate that can be obtained and permit of any movement of southern rice in competition with Chinese or Japanese rice?

A. Yes, sir.

Q. Have you in mind any rice rates to Montana points from Louisiana?

A. No, but the rate would be over one dollar.

Q. Directing your attention to a very late decision by the Interstate Commerce Commission, which came out this week, in a case in which the Northern Pacific Company and the C., B. & Q companies were parties,—I don't know whether you have seen it or not, but I ask you if you have,—in which the rate of $1.05 to Billings, Montana, was approved and established on rice from Louisiana, in a complaint brought by the Stone-Ordean-Wells Company?

A. I knew of the complaint. I have not seen the decision.

Q. Well, such a rate as that would be largely freer from the close competitive conditions you have referred to, to coast points, would it not?

A. Yes. There is no reason why the rate to Montana should not be a normal rate.

Q. Something was said about cement rates to the coast. Are there any competitive conditions regarding the movement of that traffic from the interior country to coast ports?

A. Yes. I stated that these low rates were necessary to meet the competition of cement imported from Europe and cement produced in California and other Pacific coast points.

Q. Cement may move by ocean vessels, steam and sailing at very low rates, may it not?

A. Yes.

Q. Coal, as you have already testified,—

Mr. Dillard: Wait there a moment.

By Mr. Dillard:

Q. It is a fact, too, isn't it, Mr. Woodworth, that cement will load better than most things into refrigerator cars, and furnishes loading for the refrigerator cars which need to go out into that coast country to bring the citrus fruits east?

A. Yes; it is very desirable trade for either a railroad or a ship.

Q. It is also true, is it not, of cement, that it is a product of such exceeding low price that it will not move any distance at all except on a very low freight rate?

A. Yes, sir.

Q. In the sale of cement, isn't it true that always and of necessity the freight rate is the biggest item that enters into it?

A. If it moves any distance, yes.

Q. Any distance at all?

(No response.)

Mr. Wimbish: Isn't that true of lumber, also?

The Witness: Not so true of lumber; it is true of coal.

Mr. Wimbish: Isn't the price of lumber to Chicago,—I mean the rate to Chicago,—equal to the value of the lumber at mill in Washington?

Mr. Teal: Average that.

The Witness: Not now, it was formerly.

Mr. Walter: Is it more now?

The Witness: The original price will average greater now, I think.

Mr. Walter: Than the freight rate?

The Witness: Yes. The time was when the freight rate was greater than the f. o. b. price of the lumber.

By Mr. Holden:

Q. There is a great deal of coal mined and produced in the western country, is there not, from various mines?

Mr. Teal: Where do you mean? The Northwest is so big.

Mr. Holden: Well, it is big. Mines west of the Rocky Mountains.

Mr. Teal: In what states?

Mr. Holden: The Northwestern states, Idaho, Montana, Washington and Oregon. Are there any coal supplies up in that country?

The Witness: In Montana and Washington, yes; none in Oregon of any consequence.

Mr. Dillard: Large mines in Wyoming, are there not?

The Witness: Yes, sir.

By Mr. Holden:

Q. Now, these west-bound rates on such commodities as were referred to, including cement and rice and coal—do you consider that they offer any fair basis of comparison to your east-bound lumber rate?

A. No.

Q. The record already covers pretty well the proposition; but in recent years the movement of empty cars on the Northern Pacific and Great Northern roads has been largely west-bound, has it not?

A. Yes, sir.

Q. And those cars, if loading is not secured for them of one kind or another, move west empty, long distances?

A. Yes, sir.

Q. And was that one of the reasons you had in mind that would justify a road in taking such freight as rice and cement at the kind of rates that you have referred to, in order to avoid hauling the cars empty?

A. I think I stated that those rates represented our efforts to create business and make loading for these cars, which would otherwise go west empty.

Q. And under those conditions, any rate that would represent the difference between the cost of hauling an empty car and hauling a loaded car would, to that exent, and under those circumstances, be justifiable?

A. I think so.

Q. And that was the condition of affairs in 1893 when the movement of empty cars was all east-bound, which led to the putting in of this lumber rate at that time, on a 40 cent basis to St. Paul?

A. Yes.

Q. Reference was made to reductions in other rates that were on a higher basis than these lumber rates. Have there been reductions in rates in recent years that you can refer to?

A. Yes. There have been many important reductions in rates. Our rates have been largely reduced in Minnesota and Dakota. We have had some considerable reductions in Montana, under the authority of the State Commission; and if we should accept the decision of the Spokane case, there would be a wholesale reduction of our rates in both directions, and between all points, all the way from St. Paul to the coast.

Q. St. Paul to where?

A. All the way from St. Paul to the coast.

Q. Now, speaking of the Minnesota reductions: the state authorities there reduced all of the class rates, did they not?

A. Yes.

Q. Two or three years ago?

A. Yes, sir.

Q. They reduced a large number of your important commodity rates, did they not?

A. Yes, sir.

Mr. Teal: Pardon me. Are you operating under the reduction there of the commodity rates?

Mr. Holden: We are on the merchandise rates.

The Witness: Under the class rates, yes.

Mr. Teal: No, under the commodity rates you were just asked about.

The Witness: We are not, under the ones last ordered.

Q. No, not under the last. But prior to the reduction ordered in the commodity rates, which the carriers enjoined and are now litigating, there were voluntary reductions in

these same commodities of a considerable percentage, were there not?

A. Yes. That was especially true of the granaries and coal rates.

Q. And the reductions in the merchandise rates, which were put into effect, brought about corresponding reductions in interstate merchandise rates from eastern terminals out into North Dakota, did they not?

A. Well, not the corresponding reductions, but they did cause reductions of rates.

Q. I did not mean corresponding in the same percentage, but they affected your interstate merchandise rates from eastern terminals out into North Dakota, and, to some extent, even to Montana?

A. Yes.

Q. And caused certain necessary reductions in these interstate rates resulting from the action of the state authorities in the State of Minnesota in reducing the state rates?

A. Yes, sir.

Mr. Walter: Was that done to give color to the contention that the reduction of interstate rates necessarily compels reduction of state rates?

The Witness: Of course not. We don't reduce any rate that we are not obliged to reduce, if we think the original rate was a proper one.

Q. Those interstate reductions were made out of deference to the third section of the Interstate Commerce Law, in part, at least, to avoid reductions west-bound in North Dakota, as compared to the reductions forced by the State of Minnesota authorities, were they not?

A. Yes; and the Interstate Commerce Commission has frequently held that rates which exceed the combination of locals are prima facie unreasonable, and had we not changed the rates to Dakota points they would have been higher than the combination of locals on Moorhead.

Q. So that is the color which Mr. Walter referred to, bearing upon, or throwing light upon these interstate reductions? By Mr. Walter:

Q. In all instances, did you reduce the through rate to the sum of the locals?

A. Yes.

Q. Where the local had been made by the state authorities?

A. Yes.

Q. If the local rate was just and reasonable, the interstate

rate, of course, could not be more than the sum of the locals and be reasonable?

A. That was the view taken of it.

Q. Well, that is true, isn't it, Mr. Woodworth?

A. Yes. And whether the state rate was reasonable or not, it was there, and a man could re-ship and accomplish the through rate which we made. We thought it better to make it in the tariff.

Q. He would have to have an agent there to receive the traffic and re-bill it, wouldn't he, at the intermediate point?

A. Oh, we could undoubtedly cause him much inconvenience, but it exposes us to much criticism if we attempt to charge more than the combination of rates.

By Mr. Holden:

Q. The passenger rate in Minnesota was reduced from 3 cents a mile to 2 cents, was it not?

A. Yes, sir.

Q. And that went into effect several years ago?

A. Yes, sir.

Q. Did that reduction in the state passenger rate affect your interstate passenger rates by reduction in those?

A. It changed all of our through rates as far west as Seattle.

By Mr. Teal:

Q. Mr. Woodworth, I just want to ask you one or two questions in view of this hard luck story. I want to ask you if Mr. Elliott, the president of your road, did not issue a circular in 1906, calling the attention of the public to the tremendous expansion of the business of the Northern Pacific Railway Company?

A. Yes.

Q. I will ask you if it is not a fact that your gross revenue has increased over 140 or 150 per cent. in the last eight years upon the Northern Pacific Railroad?

Mr. Holden: Mr. Teal, all that is a mere matter of statistics.

Mr. Teal: Yes, I understand so. There was a good deal of matter you were asking about, but I will get through in just a minute.

Q. It is a fact, isn't it, Mr. Woodworth?

A. I don't know the figures, but I think that may be true.

Q. Well, it has increased very largely both in gross and in net?

A. It has in gross. I am not familiar with the net figures.

Q. You are not familiar with the net returns to the Northern Pacific Railroad?

A. I have not in my mind the net earnings from year to year, in fluctuations.

Q. Has the traffic density increased?

A. Yes, sir—

Q. The number of tons carried increased?

A. —that is, it has increased up to a year ago.

Q. Well, I was speaking of during the time that this case is being confined to. Have your ton mile rates advanced very largely during this period?

A. No.

Q. Do you know whether they have not increased some?

A. There was a slight increase this last year.

Q. That is, in the rate per ton per mile?

A. Yes; due to the increased proportion of short haul business and merchandise business.

Q. Do you know anything about a dividend of 629 per cent. that was declared in November on the Northwestern Investment Company's stock?

A. No, except what I have read about it in the newspapers.

Q. Well, you know that that resulted in an extra dividend on the Northern Pacific stock, amounting to over $17,000,000, don't you?

A. I think they paid an extra dividend of eleven and a fraction per cent.

Q. On fifty-five millions of stock?

A. Yes.

Q. You do not wish to be understood as saying that a road with the earnings of the Northern Pacific railroad for the last ten years has not been getting out of its rates, and from its revenue of all kinds, a fair return on the investment, do you?

A. I have not said that. This money that you speak of as having been paid out in dividends did not come out of our earnings.

Q. No, but it came out of one of the subsidiary companies.

A. A company engaged in coal and real estate business.

Q. One of the same companies, the value of the lands of which in the Spokane case was used as an estimate to fix the basis of road making, wasn't it?

A. I don't think it was, but I won't speak positively about that.

Q. That wasn't considered in the valuation of the engineers in that case?

A. I don't think so.

Q. To the extent of $50,000,000?

A. I don't think so.

Q. You wouldn't be sure about that?

A. I won't be sure about it.

Q. Now, you were speaking about this decline in logs in the latter part of the year of 1907: did lumber go down with them?

Q. Went down the full amount, too, and more, didn't it?

A. I think so.

Q. Now, this Chicago rate, between Omaha and Chicago, of 10 cents a hundred,—you did not understand me to say either in reference to that or in reference to any of these other rates that I was asking you about, that they were unreasonably high, or that I was criticising them for being made, or being unreasonably low, did you?

A. No, I don't so understand it.

Q. It was simply a matter of fact that a certain rate was charged, that is correct, isn't it? That is all I was asking you about?

A. That is as I understand you.

Q. And you also stated, did you not, Mr. Woodworth, that the roads east of Omaha, throughout the west, to your knowledge, solicited this lumber business on this basis of 10 cents a hundred?

A. Yes.

By Mr. Dillard:

Q. Did you ever know a rate to get so low that an agent would not solicit for it?

A. No. As I stated, once the tariffs are published, why, they are expected to go out and hunt the business covered by that tariff.

By Mr. Teal:

Q. That is what I wanted to know. You fixed the rates,—I mean the traffic office,—that is correct, isn't it?

A. Yes, sir.

Q. And then your solicitors are supposed to solicit business on those rates?

A. Yes, sir.

Q. And in this case this 10 cent rate has been in a very considerable time, hasn't it?

Mr. Holden: That is a divisionable rate, isn't it, more accurately, than a rate?

A. Several years.

Q. That is what I mean,—several years.

A. I don't know how far back it goes. They formerly got 12 cents.

Q. I know, but since the 12 cent rate they got 10 cents?

A. Yes, sir.

By Mr. Walter:

Q. Whenever the traffic department finds out that a rate it has in is losing money, you cancel that rate, don't you?

A. Yes, sir.

Q. It costs you more than you get out of it, don't it?

A. Yes, sir; unless there are some indirect benefits arising from its continuance, or unless it is a part of a general adjustment of rates, which, in the aggregate, represent the profit.

Q. So that the traffic department does not allow, as a rule, rates to remain in effect from which the service costs more than the revenue: that is a rule, isn't it?

A. Why, no. If the rate does not benefit us, all things considered, we ought to take it out, and do.

Mr. Teal: Then it is the general body of rates you figure on—not specific rates?

The Witness: Yes, sir.

By Mr. Walter:

Q. Isn't it also true, Mr. Woodworth, that the price of the logs you were speaking about meant for logs delivered to the mills of the lumbermen?

A. The figures in this table, as I understand it, represent logs delivered at the mill.

Q. And the cost of delivery sometimes runs up as high as $6 a thousand feet?

A. I know of no case like that out in that country.

Q. Don't you know the testimony in the case before the Commission shows that very fact?

Mr. Dillard: Well, it shows the stumpage on the ground, too.

The Witness: That certainly wasn't the cost of transporting logs to any mill.

Q. Now, take the cost of transporting logs to Portland.

Mr. Holden: You don't claim that the transportation cost was $6 a thousand, do you?

Mr. Walter: Yes, to get it to the mills in Portland, in the log.

Mr. Holden: Oh, no. That is the log and everything else.
The Master: The log and the stumpage.
Mr. Holden: Yes, the whole works.
Q. Do you know what the cost of stumpage is?
A. It was originally about 50 cents, and lattterly about $3.
Q. So that the $2.70 advance would leave about 30 cents for stumpage?
A. The testimony in Washington, as I remember, showed the price of stumpage went up as high as $4, in some cases.
Mr. Holden: I don't remember what the record is about that; but it is all in the record.
Q. So that that increase of $2.70, if taken from the stumpage, a man who owns the logs, the standing timber,—it would leave him for his stumpage less than he was receiving for stumpage in 1892,—at least, not more than that?
Mr. Holden: Wouldn't it be fair, Mr. Walter, to direct attention to the particular figure?
Mr. Walter: I just want to see what Mr. Woodworth knows.
Mr. Teal. That is a fair statement based upon your question, absolutely.
Mr. Holden: I treated it, based on the order of the Commission.
Mr. Teal: We never assume the Commission is wrong. If you assume the Commission is right, Mr. Walter's question is right. If stumpage is worth $3 free of the charge of getting it to the mill, and this $2.70 comes out of stumpage, you will contend it leaves that stumpage worth 30 cents on the ground?
Mr. Holden: That is not a fair statement. We are not contending it comes out of stumpage exclusively of logs. The stumpage man is not the exclusive man involved in the proposition, and your own people complained about the enormous expansion in the log price, and, as one of your witnesses say, they stood an advance of $3 in ten years. So it is not fair to say that the stumpage man was the only man to be taken into consideration.
Mr. Teal: While you are on the stand, will you please state who is the middle man between the stumpage man and the manufacturer?
Mr. Holden: The log manufacturer is in there for about a ten-dollar raise in three years.
Mr. Walter: Wasn't that due to the Valparaiso and the San Francisco disaster?

Mr. Holden: Practically. They took advantage of their opportunity and expanded that price beyond all conscience.

Mr. Walter: They are not the only hold-ups.

By Mr. Holden:

Q. I want to ask one question, Mr. Woodworth. Mr. Teal directed your attention to certain financial figures relating to the Northwestern Improvement Company. You stated that none of the dividends, so-called,—the proceeds—came out of the operation of the Northern Pacific Railroad Company. So far as your knowledge goes, did any of that money involved in those figures come out of the operations of the lumber traffic, or any other operations of the railroad, from transportation?

A. That is what I said. It did not come out of the earnings of the railroad. It came from whatever may be the business operations of the Northwestern Improvement Company, and that does include the ownership and operation of coal mines.

On stipulation of the parties the master ordered that the testimony of the various witnesses need not be signed or read.

Mr. Dillard: At the request of counsel for defendants, I read into the record the following statement showing the amount of lumber carried on the Union Pacific system, by which is meant the Union Pacific Railroad, the O. R. & N. and the O. S. L., for the fiscal years 1904 to 1908, inclusive.

In the year 1904 the lumber carried was 8.57 per cent of all commercial trade.

In the year 1905 it was 8.62 per cent.

In 1906 it was 9.93 per cent.

In 1907 it was 9.58 per cent.

In 1908 it was 10.18 per cent.

An adjournment was thereupon taken until the morning of Monday, April 26, 1909, at 10 o'clock, at the Federal Building in St. Paul, Minnesota.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 451.

THE INTERSTATE COMMERCE COMMISSION, [illegible] LANT,

vs.

UNION PACIFIC RAILROAD COMPANY [illegible]

APPEAL [illegible]

IN THE

Circuit Court of the United States.

FOR THE DISTRICT OF MINNESOTA,

THIRD DIVISION.

UNION PACIFIC RAILROAD CO., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., and Oregon and California Railroad Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 883.

NORTHERN PACIFIC RAILWAY CO., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., and Oregon Railroad and Navigation Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 884.

GREAT NORTHERN RAILWAY CO., Northern Pacific Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., and Southern Pacific Co., Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 885.

HON. FREDERICK N. DICKSON, Master.

TRANSCRIPT OF RECORD.

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Room 326 Federal Building, St. Paul, Minn.

Monday, April 26, 1909, 10:00 o'clock a. m.

Proceedings were resumed before Special Master Frederick Dickson, at the above time and place.

Present:

On behalf of the Complainants, Mr. Hale Holden and Mr. Charles Donnelly.

On behalf of the Defendant, Mr. Luther M. Walter and Mr. J. N. Teal.

Mr. Donnelly: If your Honor please, before proceeding with Mr. Hogeland's testimony, I wish to introduce in evidence some of the information, in the form of exhibits, that was called for by Mr. Teal in connection with Mr. Darling's testimony, containing a copy of the estimate of Mr. Darling in the Spokane rate case, which may be introduced in evidence (and I believe was introduced in evidence) and marked Defendant's Exhibit 1 (Darling). We now substitute that copy for the original which has been withdrawn. We introduce it as part of the cross-examination.

(Said paper was marked "Defendant's Exhibit 1 (Darling)."

Mr. Donnelly: Now, in connection with that sheet of Mr. Darling's Exhibit 4, which is headed "Mileage not included in operated mileage statement of April 12, 1909," I desire to introduce in evidence an additional sheet that may be marked "Complainants' Exhibit 12" and that will give in detail the information as to that mileage that is not included in "Operated Mileage," as so appears in the original exhibit.

Mr. Teal: It is a new exhibit?

Mr. Donnelly: It is a new exhibit, but it is to be read in connection with Complainants' Exhibit 4, and particularly in connection with that sheet of Complainants' Exhibit 4 that is headed the same way as this exhibit is.

COMPLAINANT'S EXHIBIT 12 (DARLING).

MILEAGE NOT INCLUDED IN OPERATED MILEAGE STATEMENT OF APRIL 12th, 1909

Description.	Total Mileage.		N. P. Equivalent Mileage.		Remarks.
	Main Track.	Spurs, Yard Trks. and Sdgs.	Main Track	Spurs, Yard Trks. and Sdgs.	
Lines in Manitoba	354.65	47.08	354.65	47.08	100% owned by N. P. Ry.
St. P. Un. Dept. Co	0.56	8.68	0.06	0.96	N. P. owns 1/9 interest.
Minn. Transfer Ry	.....	79.74	.....	7.97	N. P. owns 1/10 interest.
Lake Supr. T. & T. Ry.	.....	20.59	.....	6.86	N. P. owns 1/3 interest.
N. P. Ter'l Co. of Ore	0.92	20.70	0.37	8.28	N. P. owns 40% interest.
B. F. & I. F. Ry	34.01	3.84	34.01	3.84	100% owned by N. P. Ry.
Minn. & Inter'l Ry	174.60	56.97	122.22	39.88	N. P. owns 70% interest.
SPOKANE, PORTLAND & SEATTLE RY.					
Vancouver-Kennewick	220.60	.....	110.30	.....	N. P. owns ½ interest.
Panco-Snake Riv. Jct	26.09	.....	13.05	.....	N. P. owns ½ interest.
S. R. Jct.-Spokane	119.01	.....	59.50	.....	N. P. owns ½ interest.
S. R. Jct.-Riparia	40.60	.....	20.30	.....	N. P. owns ½ interest.
ASTORIA & COLUMBIA RIVER RY.					
Goble to Halladay	79.70	.....	39.85	.....	N. P. owns ½ interest.
Warrenton-Ft. Stevens	3.80	.....	1.90	.....	N. P. owns ½ interest.
COLUMBIA RIVER & NORTHERN RY.					
Lyle to Goldendale	41.60	.....	20.80	.....	N. P. owns ½ interest.
Total	1,096.14	237.60	777.01	114.87	

Mr. Donnelly: Now, Mr. Teal called for a detailed statement as to the equipment, and I now have on hand that detailed statement, and I will offer it in evidence as Complainants' Exhibit 13.

(Said paper was marked Complainants' Exhibit 13.)

COMPLAINANT'S EXHIBIT 13 (DARLING).

Steam Locomotives.

Statement Showing the Number of Various Classes of Locomotives Owned by the Northern Pacific Railway Company as of April 12th, 1909.

Class	Number	Class	Number	Class	Number
B	21	F1	32	P1C	11
B1	2	F2	2	P2	3
B2	1	F3	8	P2C	7
B5	2	F4	3	P3C	20
C1	11	F5	2	Q	20
C2	2	F6	1	Q1	48
C3	37	F7	2	Q2C	2
C6	33	G	9	Q3	10
C7	1	H1	1	RC	20
C10	1	H2	1	SC	15
C19	4	H3	1	S1C	14
C20	6	I	16	S2C	30
C21	3	I2	3	S3C	24
C22	4	K	4	S4C	40
C23	4	K1	28	S10	10
C27	1	K2	1	S11	3
C30	4	L	3	T	150
C31	2	L1	2	V	3
D	12	L2	10	V2	1
D1	6	L3	1	W	160
D2	22	L4	3	WTC	20
D3	79	L5	3	XC	4
D5	3	L6	20	YC	14
D5C	19	L7	16	Y1C	12
D6	4	L8	1	Y1TC	1
E	9	L9	70	Y2	4
E1	5	M	2	Y2TC	26
E2	14	N	3	Y3	1
E3	29	N1	3	Y3TC	13
E4	3	P	13	Y4	14
E5	2	PC	5	Y5	10
E7	3	P1	12	Z	16

Total 1,356

Estimated cost to reproduce $18,567,911.57

Passenger Train Cars.

STATEMENT SHOWING NUMBER OF CARS OF EACH CLASS OWNED BY THE NORTHERN PACIFIC RAILWAY COMPANY AS OF APRIL 12th, 1909.

Class	No. of Cars
Air Brake Instruction	1
Baggage	84
Business	12
Business Sup't	9
Cafe Observation	5
Chair	8
Coaches, First Class	255
Coaches, Second Class	132
Combination	67
Dining	47
Emigrant	5
Express	54
Mail and Express	76
Milk	2
Observation	18
Parlor	6
Postal	30
Tourist	69
Sleeper (½ interest)	103
Total	983
Cost to reproduce	$7,480,602.00

Freight Train Cars.

STATEMENT SHOWING NUMBER OF CARS OF EACH CLASS OWNED BY THE NORTHERN PACIFIC RAILWAY COMPANY AS OF APRIL 12th, 1909.

Class	No. of Cars
Box	23,757
Flat	7,701
Coal	4,184
Stock	2,676
Furniture	433
Refrigerator	1,436
Ballast	848
Slab	22
Oil Tank	12
Lidgerwood	552
Transfer	40
Hart Convertible	790
Total	42,451
Cost to reproduce	$36,593,737.00

MISCELLANEOUS EQUIPMENT.

STATEMENT SHOWING NUMBER OF CARS OF EACH CLASS OWNED BY THE NORTHERN PACIFIC RAILWAY COMPANY AS OF APRIL 12th, 1909.

Class	No. of Cars
Caboose, 4 Wheel	178
Caboose, 8 Wheel	594
Cinder	318
Water	79
Outfit	1,516
Boarding	123
Ballast Spreader	32
Weed Burner	3
Pile Drivers	14
Snow Plows	22
Tool	39
Pile Driver Tender	1
Scow Driver	2
Ditchers	5
Derricks	3
Wrecking Cranes	15
Wrecking Cars	12
Steam Shovels	27
Supply Cars	4
Dynamometer	1
Garbage	6
Plow Cars	27
Lidgerwood Unloader	17
Electric Crane	1
	3,039
Cost to reproduce	$1,978,710.00

FLOATING EQUIPMENT.

STATEMENT SHOWING FLOATING EQUIPMENT OWNED BY THE NORTHERN PACIFIC RAILWAY COMPANY AS OF APRIL 12th, 1909.

Transfer Steamer Tacoma.
Auxiliary Barge.
Ferry inclines at Kalama and Goble.
Cost to reproduce $612,400.00

Mr. Donnelly: Mr. Teal also called for certain information from Mr. Darling as to the estimates submitted by him of the cost of construction of certain new lines concerning which Mr. Darling testified; and also as to what those new lines had in fact cost in those cases where they had been completed. That information I now have, and will introduce a sheet containing it, which may be marked "Complainants' Exhibit 14."

(Said paper was marked "Complainants' Exhibit 14.")

COMPLAINANT'S EXHIBIT 14 (DARLING).

STATEMENT SHOWING APPROXIMATE ESTIMATES AND THE ACTUAL COST OF THE FOLLOWING PIECES OF RAILROAD CONSTRUCTION.

Made at the request of the Counsel for the Defense in the Lumber Rate Case.

	Main Track Mileage.	Original Approximate Estimate.	Date of Original Estimate.	Cost to February 28, 1909.
‡Lake Park to Glyndon:				
Main Track	26.83	$2,140,791.00	Jan. 27, '06	$3,301,863.03
Second Track	26.83			
Valley City Change of Line (Alta-Berea):				
Main Track	9.4	939,288.00	Feb. 28, '06 Feb. 13, '07 July 21, '07	1,303,091.17
Second Track	1.4			
Livingston to Muir:				
Main Track	12.10	778,500.00	June 1, '06	1,483,267.82
Second Track	10.54			
St. Regis to Paradise	21.80	1,446,742.00	Jan. 15, '07	2,322,693.09
White Pine Hill Grade Revision	28.40	1,676,208.00	Feb. 14, '07	2,455,288.19
‡Garrison to Missoula:				
Revision of Line and Grade:				
Main Track	30.333	3,510,266.00	June 14, '07	5,496,803.26
Second Track	30.333			
Second Track Work	39.230			
Line from Mandan South	72.00	2,741,872.66	Feb. 15, '08	No work done
Line up Cannon Ball River	90.00	No Estimate made.		No work done

‡Work in progress—not yet completed.

Mr. Teal: In connection with this exhibit in the Spokane case, and with one other here, I shall want to ask Mr. Darling a few questions.

Mr. Donnelly: Do you mean you want to ask him at this session?

Mr. Teal: Yes.

Mr. Donnelly: I don't know whether he will be here or not, but if he is—

Mr. Teal: Well, of course, if he is not here—

Mr. Donnelly: Of course, if he is not here he cannot testify. I am just stating I don't know whether he is here or not. I will send for him and we will have him here at the afternoon session.

ALBERT H. HOGELAND, being duly sworn as a witness on behalf of the complainants, testified as follows:

Direct Examination.

By Mr. Holden:

Q. Mr. Hogeland, you occupy the office of chief engineer of the Great Northern Railway Company?

A. Yes, sir.

Q. How long have you been connected with that Company?

A. About 30 years.

Q. Does that represent your railroad work, or have you had experience with other railroads than the Great Northern?

A. I have had about four years experience with the Northern Pacific, and the balance of my experience has been with the Great Northern and its antecedent lines.

Q. The predecessor company of the Great Northern was the St. Paul, Minneapolis & Manitoba and certain other subsidiary companies, was it not?

A. Yes, sir.

Q. And within the last year substantially all of the subsidiary companies have been merged into the Great Northern Company, have they not?

A. Yes, sir; I understand it that way.

Q. There are still certain terminal companies that are independent in their organization and maintain their independent corporate organization, but most of the so-called subsidiary companies have recently, within the last year, been merged into the main company?

A. Yes, sir.

Q. Will you state briefly the nature of your experience with the Great Northern property, as to what it has been?

A. I began in March, 1879; entered the service of the St. Paul & Pacific as a rodman. I continued as a rodman and leveler until September of that year. From September, 1879, until March, 1880, I was a leveler on surveys between St. Paul and Chicago under Mr. Stickney. From April 1880 until March 1882, I was leveler, topographer and transit man on surveys for the Northern Pacific in the Yellowstone and Rocky Mountain Division. From March 1882 until March 1884 I was assistant engineer on construction of the Bozeman Tunnel and a stretch of heavy work on each side of the tunnel.

Q. That is for the Northern Pacific?

A. That is for the Northern Pacific. From April 1884 until September of the same year I was an assistant engineer on surveys and construction of lines in North Dakota for the St. Paul, Minneapolis & Manitoba Company. From September 1884 until July 1885 I was assistant engineer on construction for the Northern Pacific in Wisconsin between Superior and Ashland. From July 1885 until the present time I have been continuously with the St. Paul, Minneapolis & Manitoba and the Great Northern in the following capacities: From July, 1885, until September 1890 I was assistant engineer on surveys and construction of lines on the eastern part of the system—Minnesota, North Dakota, South Dakota, and the Eastern part of Montana. In September 1890 I was appointed engineer of maintenance of way. I continued in that work until—I have got my dates a little mixed in the latter part of that. I had better refer—

Q. If you have any memorandum you may refer to it.

A. I think I said 1900, didn't I?

Mr. Teal: 1890, you said.

The Witness: 1890, that should have been.

Mr. Teal: That is what you did say.

The Witness: From July 1885 to September 1890 I was engaged in this work as assistant engineer, in Minnesota, North Dakota, South Dakota and Montana. Then from September 1890 to August 1896 I was engineer of maintenance of way of the Eastern district; and from August 1896 to March 1902 I was resident engineer of the eastern district of the system, and my duties in that capacity covered maintenance of way as well as construction work.

Q. How far West do the Eastern districts extend?

A. Extended to Great Falls and Cut Bank, which is in the central part of Montana. In March 1902 I was appointed assistant chief engineer; and in February, 1903, I was appointed chief engineer of the system.

Q. At the time you first went with the Manitoba Company what was the approximate mileage of the system?

A. Do you mean in 1879?

Q. Yes.

A. About 600 miles.

Q. And about how far west had it been constructed?

A. Only to the western boundaries of Minnesota.

Q. If I understand you, with the exception of the interval shown in your statement, when you were connected with the Northern Pacific Company, you have had personal connection with substantially all of the construction work that has been going on west of Minnesota and the additional lines in Minnesota, since 1879?

A. Yes. That is very largely true. For the construction west of Pacific Junction a separate organization was made and the work handled from Helena, Montana, for a period of about four years; and the engineer at the east end did not have to do with that construction, except in a general way.

Q. What did that construction cover?

A. That covered the construction of the Pacific extension.

Q. And your connection in a more direct way with that part of the system came later?

A. Later, yes, sir.

Q. And to what extent, speaking of the Pacific extension and also of the balance of the lines, when you had to do personally with the maintenance and reconstruction of the different parts of the system?

A. Why, I have had very largely to do with it.

Q. And in recent years, as shown by your statement, that class of work—not only maintenance, but of reconstructing lines and rebuilding them—has come under your direct supervision, has it not?

A. Yes, sir.

Q. You were asked to prepare, for use in this case, a series of tables showing your judgment of what it would cost.

Mr. Teal: Would you excuse me just a moment. I would a little rather have you, instead of telling the witness what he was asked, ask him what he was asked to do.

Q. Have you prepared a table of figures for use in connection with your testimony in this case?

A. Yes, sir; I have.

Q. And will you state what that table represents and what you were asked to incorporate in that table?

A. It represents the cost of reproduction of the Great Northern system as of June 30, 1908.

Q. Just what do you mean by the cost of reproduction? Just explain the theory and the basis upon which you have proceeded.

A. We proceeded first to tabulate the mileage of the entire system, main tracks and side tracks, then proceeded with the amount of grading, bridging, track material, buildings, shop machinery, tools, equipment, and every other item that entered into the system as it exists to-day. To these quantities we applied the prices prevailing during the year 1908, as far as possible—the entire statement being summarized and shown as the cost of reproduction of the system as of that date.

Q. Is there anything included in the tables you have referred to, outside of the property used in the operation of the Great Northern Lines and its subsidiary companies or companies that furnish facilities for the operation of the line?

A. No, there is nothing outside of that but what is used in connection with the system and the operation of the system.

Q. That is what I want to get it. This covers the operating properties?

Q. Then, if I understand your statement it represents your judgment of what it would cost to have reproduced the system as of June 30, 1908?

A. It does.

Mr. Teal: May I ask just one question. Is it everything new on that date?

The Witness: Y[illegible]ir; reproduction new on that date.

Mr. Holden: Now if you will produce the statement we will have it marked "Complainants' Exhibit 15 (Hogeland)."

(Said paper was marked "Complainants' Exhibit 15 (Hogeland)."

COMPLAINANT'S EXHIBIT 15 (HOGELAND).

GREAT NORTHERN RAILWAY.
COST OF REPRODUCTION OF THE SYSTEM.

June 30th, 1908.

	Main Track	6,760.66 Miles
	Second Track	147.57 "
	Side Track	1,620.75 "
	Total all Tracks	8,528.98 "
1	Engineering	$ 10,153,352.00
2	Right of Way, Station and Terminal Grounds	87,825,744.00
4	Grading	95,878,362.00
5	Tunnels	7,656,030.00
6	Bridges, Trestles and Culverts	19,385,741.00
7	Ties	20,142,783.00
8	Rails	36,577,990.00
9	Frogs and Switches	968,030.00
10	Track Fastenings and Other Material	7,864,950.00
11	Ballast	10,709,880.00
12	Tracklaying and Surfacing	7,927,147.00
13	Roadway Tools	172,800.00
14	Fencing Right of Way	956,415.00
15	Crossings and Signs	1,800,543.00
16	Interlocking and Other Signal Apparatus	586,886.00
17	Telegraph and Telephone Lines	1,879,992.00
18	Station Buildings and Fixtures	3,985,200.00
19	General Office Buildings and Fixtures	643,500.00
20	Shops, Engine Houses and Turntables	4,025,000.00
21	Shop Machinery and Tools	1,976,016.00
22	Water Stations	2,886,400.00
23	Fuel Stations	596,250.00
24	Grain Elevators	2,275,500.00
25	Storage Warehouses	34,800.00
26	Dock and Wharf Property	1,969,300.00
27	Gas Producing Plants	20,000.00
28	Miscellaneous Structures	3,071,020.00
29	Contingencies	16,628,797.00
	Total Road Items	$348,598,428.00
30	Steam Locomotives	16,210,048.00
31	Passenger Train Cars	5,810,775.00
32	Freight Train Cars	32,464,727.00
33	Work Equipment	1,481,772.00
	Total Equipment Items	$55,967,322.00

34	Legal, Organization and Other Expenditures	12,136,972.00
35	Interest during Construction	93,292,575.00
	Total General Expenditures	$105,429,547.00

SUMMARY.

Road	$348,598,428.00
Equipment	55,967,322.00
General Expenditures	105,429,547.00
	$509,995,297.00
36 Stores and Supplies on Hand	8,219,581.00
37 Lines under Construction	7,908,002.00
38 Interest in Terminal Railways	1,302,916.00
39 Interest in Spokane, Portland & Seattle Ry	21,827,521.00
Grand Total	$549,253,317.00

Chief Engineer's Office, April 15th, 1909.

GREAT NORTHERN RAILWAY.

MILEAGE.

June 30th, 1908.

	Main Track.	Second Track.	Side Track.	Total.
Wisconsin	32.19	18.18	59.73	110.10
Minnesota	2,052.56	99.81	614.38	2,766.75
South Dakota	262.36	.....	30.95	293.31
Iowa	76.58	.....	12.59	89.17
North Dakota	1,544.53	22.17	300.18	1,866.88
Montana	1,368.65	.....	274.18	1,642.83
Idaho	106.03	.....	17.51	123.54
Washington	814.86	7.41	225.25	1,047.52
Manitoba	161.71	.....	16.04	177.75
British Columbia	336.40	.....	49.56	385.96
	6,755.87	147.57	1,600.37	8,503.81
Duluth Terminal	1.82	.....	3.84	5.66
Minneapolis Western	1.69	.....	5.20	6.89
Union Terminal	1.28	.....	11.34	12.62
	6,760.66	147.57	1,620.75	8,528.98

Main and Second Track Mileage	6,908.23 Miles
Side Track Mileage	1,620.75 "
Total all Tracks	8,528.98 "

GREAT NORTHERN RAILWAY.

LINES IN OPERATION.

June 30, 1908.

WISCONSIN.		
State Line at Foxboro to Superior, including Connection with D. S. & W. at Saunders	21.88	
Boyleston Junction to State Line	10.31	32.19
MINNESOTA.		
St. Paul via Barnesville to International Boundary at Noyes, including Line to St. Vincent	392.72	
State Fair Grounds Branch, St. Paul	.64	
Coon Creek Junction to State Line at Foxboro	112.01	
To Quarries at Sandstone	2.61	
In Duluth	.38	
Elk River to Milaca	31.81	
East St. Cloud to Brookpark	58.30	
East St. Cloud to Sauk Rapids	2.13	
St. Cloud to Willmar	55.56	
Sauk Center to Cass Lake	140.00	
Evansville to Tintah	32.01	
Fergus Falls to Pelican Rapids	21.65	
Barnesville to State Line at Moorhead	22.79	
Moorhead to Redland	66.05	
Minneapolis to State Line at Breckenridge	208.56	
Hopkins Junction to Hopkins	3.57	
Spring Park Junction to Hutchinson	43.90	
Clearwater Junction to St. Cloud	63.08	
To Dam, St. Cloud	2.57	
Willmar to State Line south of Jasper	122.64	
South Dakota Line to Iowa Line	11.27	
Benson to South Dakota Line	46.18	
Morris to Browns Valley	48.60	
Yarmouth to North Dakota Line	9.18	
North Dakota Line to Moorhead	36.80	
Wisconsin State Line to Redland	247.94	
Brookston to Ellis	46.51	
Mississippi to Dewey Lake and Virginia	66.41	
Kelly Lake to Fermoy	23.40	
Kelly Lake to Exmore	9.69	
Red Lake Falls to Greenbush	61.23	
St. Hilaire to Wylie	7.49	
Crookston to East Grand Forks	23.60	
Branches to Mines	31.28	2,052.56

SOUTH DAKOTA.		
Minnesota Line near Jasper to Minnesota Line near Booge, via Garretson	12.66	
Garretson to Yankton	80.94	
Minnesota Line to Huron	115.31	
North Dakota Line to Aberdeen	53.45	262.36
IOWA.		
Minnesota State Line to Center of Division Street, Sioux City		76.58
NORTH DAKOTA.		
State Line at Fargo to Grand Forks	77.53	
State Line at Wahpeton to Devils Lake	180.60	
Minnesota State Line to Forbes	109.25	
Rutland to South Dakota Line	10.46	
Wahpeton to Minnesota State Line north of Lurgon	6.02	
Addison to Chaffee	11.78	
Casselton to Larimore	74.67	
Ripon to Portland Junction	41.09	
Grand Forks to Montana State Line	350.99	
Grand Forks to International Boundary at Neche	81.35	
Grafton to International Boundary north of Walhalla	53.44	
Larimore to Hannah	94.95	
Lakota to Sarles	73.13	
Churches Ferry to International Boundary north of St. John	59.08	
York to Dunseith	42.27	
Rugby to Antler	80.84	
Towner to Maxbass	46.10	
Granville to Sherwood	61.82	
Berthold to Crosby	89.16	1,544.53

MONTANA.		
North Dakota Line to Idaho Line	691.42	
Shelby to Great Falls	97.97	
Virden to International Boundary at Sweet Grass	36.54	
Columbia Falls to Lakeview	51.68	
Kalispell to Somers	10.45	
Rexford to International Boundary at Gateway	8.86	
Pacific Junction to Butte	290.78	
Great Falls to Judith Gap	121.17	
Armington to Neihart	38.27	
Gerber to Stocket	8.09	
Lewis to Sand Coulee	2.39	
Fair Grounds Branch, Great Falls	1.96	
B. & M. Smelter Branch, Great Falls	5.07	
Fair Grounds Branch, Helena	.68	
Mountain View Branch, Butte	3.32	1,368.65
IDAHO.		
Montana Line to Washington Line	80.24	
Bonners Ferry to International Boundary at Port Hill	25.79	106.03
WASHINGTON.		
Idaho Line to Seattle	386.91	
Hillyard to Spokane	4.30	
Colbert to International Boundary at Waneta	125.84	
Northport to International Boundary at Paterson	7.47	
Marcus to International Boundary at Laurier	27.66	
International Boundary at Danville to Republic	31.70	
Republic to Eureka Gulch	9.80	
Curlew to International Boundary at Midway	14.52	
International Boundary near Molson to International Boundary at Chopaka	48.46	
Everett to International Boundary at Blaine	89.10	
Anacortes to Rockport	57.72	
Belleville to Yukon	11.38	814.86
MANITOBA.		
International Boundary at West Gretna to Portage la Prairie (Mid. Ry. of Manitoba)	77.01	
International Boundary near Haskett to Morden (Midland Ry. of Manitoba)	15.25	
International Boundary near Bannerman to Brandon (B. S. & H. B. Ry.)	69.45	161.71

BRITISH COLUMBIA.		
International Boundary at Gateway to Michel (Crows Nest Southern Ry.)	74.18	
International Boundary at Waneta to Troupe Junct. (Nelson & Ft. Sheppard Ry.)	55.42	
International Boundary at Paterson to Rossland (Red Mountain Ry.)	9.59	
International Boundary at Laurier to International Boundary at Danville, including Line to Grand Forks (V. V. & E. Ry. & Nav. Co.)	16.47	
Grand Forks to Phoenix (V. V. & E. Ry. & Nav. Co.)	25.82	
Line to Granby Smelter (V. V. & E. Ry. & Nav. Co.)	4.74	
International Boundary near Midway to International Boundary near Molson (V. V. & E. Ry. & Nav. Co.)	28.89	
International Boundary at Chopaka to Keremeos (V. V. & E. Ry. & Nav. Co.)	18.20	
New Westminster to Vancouver (V. V. & E. Ry. & Nav. Co.)	14.79	
Cloverdale to Port Guichon (V. V. & E. Ry. & Nav. Co.)	17.31	
International Boundary at Douglass to Brownsville (New Westminster So. Ry.)	24.10	
International Boundary at Port Hill to Wilkes (Bedlington & Nelson Ry.)	12.04	
Sirdar Junction to Kuskonook (Bedlington & Nelson Ry.)	3.26	
Kaslo to Sandon, including Line from Cody Junction to Cody (Kaslo & Sloan Ry.)	31.59	336.40
		6,755.87
DULUTH TERMINAL RAILWAY		1.82
MINNEAPOLIS WESTERN RAILWAY		1.69
UNION TERMINAL RAILWAY (SIOUX CITY)		1.28
TOTAL MILEAGE		6,760.66

ENGINEERING.

Estimated at 3% of all Road Items.
3% of $338,445,076.00 = $10,153,352.00

RIGHT OF WAY, STATION AND TERMINAL GROUNDS.

Right of Way, Station and Terminal Grounds as per schedule prepared by the Right of Way Department . . $87,825,744.00

GRADING.

Clearing	31,064 acres	$82.50	$ 2,562,780.00
Grubbing	565,530 sq. rods	1.65	933,125.00
Earth	160,896,792 cu. yds.	.31	49,878,006.00
Hard Pan	34,392,746 "	.45	15,476,736.00
Loose Rock	8,011,517 "	.55	4,406,334.00
Solid Rock	15,151,945 "	1.10	16,667,140.00
Rip Rap	1,794,278 "	2.00	3,588,556.00
Retaining Wall	92,275 "	9.00	830,475.00
Slope Wall	220,060 "	3.50	770,210.00
Crib work			765,000.00
			$95,878,362.00

TUNNELS.

6,993 lin. ft. unlined single track tunnel @ $70.00	$ 489,510.00
20,508 lin. ft. timber lined single track tunnel @ $120.00	2,460,960.00
19,952 lin. ft. concrete lined single track tunnel:	
Boulder 6,139′ @ $175.00 =	1,074,325.00
Cascade 13,813′ @ $195.00 =	2,693,535.00
5,141 lin. ft. concrete lined double track tunnel at Seattle, G. N. interest one-half	937,700.00
	$7,656,030.00

BRIDGES, TRESTLES AND CULVERTS.

Stone Arch, Minneapolis, 2,031 lin. ft	$ 867,000.00
Steel Bridges with masonry, 65,432 lin. ft	7,547,195.00
Wooden Bridges, 489,573 lin. ft	6,989,779.00
Permanent Culverts	2,928,408.00
Timber Culverts	1,053,359.00
	$19,385,741.00

TIES.

TRACK TIES:		
23,583,120 ties @ $0.82 =		$19,338,158.00
SWITCH TIES:		
9,724 sets @ $82.00 =		797,368.00
CROSSING TIES:		
177 sets @ $41.00 =		7,257.00
		$20,142,783.00

RAILS.

Main Track	756,927 tons
Side Track	163,274 "
	920,201 tons

Main and Side Track tonnage computed from Rail Records.

Average price per ton, including handling, inspection and freight, $39.75.

920,201 tons @ $39.75 = $36,577,990.00

FROGS AND SWITCHES.

Average price per set, including switch stand and bolts, lamp, lock, switch points, connecting and tie rods, plates, braces, clips, frog and guard rails, including freight charges, $95.00.

9,724 complete turnouts (except ties)	@	$95.00 =	$923,780.00
177 crossing frogs (except ties)	@	$250.00 =	44,250.00
			$968,030.00

TRACK FASTENINGS AND OTHER MATERIAL.

Angle Bars,	73,691 tons	@	$45.00 =	$3,316,095.00
Bolts and Nuts,	7,805 "	@	60.00 =	468,400.00
Spikes,	29,105 "	@	51.00 =	1,484,355.00
Tie Plates,	16,464,000 plates	@	.15 =	2,469,600.00
Rail Braces,	844,000 braces	@	.15 =	126,600.00
				$7,864,950.00

BALLAST.

3,591 miles of main track have a full ballast lift of 3,000 cu. yds. to the mile.

1,942 miles of main track have a partial ballast lift of 2,250 cu. yds. to the mile.

1,421 miles of side track have a partial ballast lift of 1,500 cu. yds. to the mile.

3,591 miles at 3,000 cu. yds	10,773,000 cu. yds.
1,942 miles at 2,250 cu. yds	4,369,500 cu. yds.
1,421 miles at 1,500 cu. yds	2,131,500 cu. yds.
	17,274,000 cu. yds.

Average price per cu. yd. including cost of loading, unloading, putting under track and dressing, maintenance and repairs of steam shovels, train service hauling, repairs of equipment, transportation of men, tools and supplies, $0.62.

17,274,000 cu. yds. @ $0.62 = $10,709,880.00

TRACKLAYING AND SURFACING.

Average cost per mile handling material, curving rails, laying and surfacing track, tie plating, train service hauling material to the front, repairs of equipment, transportation of men, tools and supplies, $900.00.

8,528.98 miles at	$900.00	$7,676,082.00
9,724 switches at	25.00	243,100.00
177 crossings at	45.00	7,965.00
		$7,927,147.00

ROADWAY TOOLS.

Cost of Sectionmen's and Bridge Carpenters' Tools, hand cars and push cars	$172,800.00

Fencing Right of Way.

Average cost per mile of standard Right of Way fence, including train service and transportation of material, labor and tools, $165.00.

Average cost per set Cattle Guards, including train service and transportation of material, labor and tools, $15.00.

5,403 miles of Right of Way fence	@	$165.00 =	$891,495.00
4,328 sets of Cattle Guards.....	@	$15.00 =	64,920.00
			$956,415.00

Crossings and Signs.

Grade Crossings (Plank, Spikes and Labor) =	$75,710.00
Track Signs.....	54,088.00
Overhead Bridges, Steel.....	1,474,696.00
Wood.....	198,049.00
	$1,800,543.00

Interlocking and Other Signal Apparatus.

Cost to reproduce interlocking apparatus.....	$400,574.00
Cost to reproduce block and other signal apparatus....	186,312.00
	$586,886.00

Telegraph and Telephone Lines.

Estimated cost of reproduction of Telegraph Line consisting of poles, cross arms, pins, glass, wire, etc., also quadruplex, instruments, batteries, furniture, etc., including train service, tools, transportation of men and material..... $1,879,992.00

As furnished by Superintendent of Telegraph.

Station Buildings and Fixtures.

PASSENGER DEPOTS, BRICK AND STONE.

Hamline.....	$ 3,500.00
Minneapolis.....	342,500.00
Wayzata.....	13,200.00
Litchfield.....	17,700.00
Willmar.....	22,500.00
Benson.....	24,800.00
Morris.....	9,400.00
Breckenridge.....	20,100.00
Anoka.....	6,500.00
St. Cloud.....	34,400.00
Sauk Center.....	6,600.00
Alexandria.....	29,200.00
Fergus Falls.....	20,800.00
Barnesville.....	13,300.00
Moorhead.....	7,700.00
Crookston.....	38,700.00

STATION BUILDINGS AND FIXTURES—(Continued).

Princeton	$ 17,200.00
Sioux Falls	17,300.00
Huron	8,600.00
Aberdeen	25,300.00
Sioux City	259,000.00
Ellendale	10,800.00
Fargo	50,800.00
Grand Forks	37,500.00
Mayville	4,800.00
Grafton	7,500.00
Larimore	17,300.00
Devils Lake	25,800.00
Rugby	21,000.00
Minot	19,800.00
Glasgow	10,900.00
Kalispell	10,400.00
Spokane	137,500.00
Bellingham	18,400.00
Seattle (G. N. Interest)	295,000.00
Brandon	42,000.00
Vancouver	12,500.00
	$1,660,400.00
Frame passenger depots	$1,588,400.00

FREIGHT DEPOTS, BRICK AND STONE.

St. Paul (2)	$ 96,500.00
Minneapolis (2)	79,900.00
Duluth	7,600.00
St. Cloud	13,200.00
Moorhead	4,400.00
Sioux City (2)	42,400.00
Fargo	18,200.00
Grand Forks	19,800.00
Minot	17,000.00
Havre	6,000.00
Great Falls	22,100.00
Spokane	22,500.00
Seattle (2)	80,000.00
Brandon	16,000.00
Vancouver	9,500.00
	$ 455,100.00
Frame freight sheds	$ 148,900.00
Loading platforms	$ 132,400.00

SUMMARY.

Passenger Depots, brick and stone	$1,660,400.00
Passenger Depots, frame	1,588,400.00
Freight Depots, brick and stone	455,100.00
Freight Depots, frame	148,900.00
Loading Platforms	132,400.00
	$3,985,200.00

GENERAL OFFICE BUILDING AND FIXTURES.

General Office Building, St. Paul, including fixtures and furniture and all equipment. Land value not included.	$643,500.00

SHOPS, ENGINE HOUSES AND TURNTABLES.

SHOPS.

Superior	$ 131,000.00
St. Paul	1,041,400.00
St. Cloud	82,600.00
Barnesville	25,200.00
Sioux City	12,500.00
Devils Lake	141,900.00
Havre	127,400.00
Great Falls	42,000.00
Spokane	149,000.00
Everett	70,200.00
	$1,823,200.00

Above does not include engine houses, turntables, cinder pits, water tanks and coal chutes.

Brick and stone engine houses, 628 stalls at $2,100.00	$1,318,800.00
Frame engine houses 132 stalls at 1,400.00	184,800.00
Turntables, steel or iron, 60 at $5,500.00	330,000.00
Turntables, frame, 9 at 1,800.00	16,200.00
Cinder Pits, Standard, 22 at 4,500.00	99,000.00
Cinder Pits, Old Style, 18 at 750.00	13,500.00
Store Houses, oil houses, sand houses and small shop buildings, other than those included in shop buildings above	239,500.00
	$4,025,000.00

SHOP MACHINERY AND TOOLS.

Machinery and Tools in Repair Shops	$1,726,466.00
Machinery and Tools in Engine Houses	249,550.00
	$1,976,016.00

Includes cost of machinery and tools, transportation and installing of same.

WATER STATIONS.

433 Water Stations, including tanks, pump houses, pumps, engines, windmills, standpipes, wells, reservoirs and all appurtenances for supplying locomotives with water, including transportation of men and materials	$2,886,400.00

FUEL STATIONS.

42 Standard fuel stations complete @ $9,500.00 =	$399,000.00
20 Standard fuel stations complete @ 7,500.00 =	150,000.00
63 Platform fuel stations, a portion with cranes and buckets @ $750.00 =	47,250.00
	$596,250.00

GRAIN ELEVATORS.

Superior S (steel)	$1,536,400.00
Superior X	370,000.00
Minneapolis	260,500.00
Seattle, Smith's Cove	108,600.00
	$2,275,500.00

Land value not included.

STORAGE WAREHOUSES.

Wool Warehouses at Armington	$2,500.00
Great Falls	8,200.00
Big Sandy	1,600.00
Chinook	2,500.00
Benton	5,000.00
Fruit Warehouse at Sioux City	15,000.00
	$34,800.00

DOCK AND WHARF PROPERTY.

Superior No. 1, including Dredging	$175,000.00
No. 2, including Dredging	80,800.00
No. 5, No. 6, including Dredging and Machinery	449,500.00
Flour Shed on Dock No. 2	142,800.00
Seattle, Smith's Cove, including Dredging	626,400.00
Warehouse on Smith's Cove Dock	113,900.00
Everett Dock and Elevator	250,000.00
Miscellaneous Small Docks	130,900.00
	$1,969,300.00

Land value not included.

GAS PRODUCING PLANTS.

Cost to reproduce acetylene gas plant at Mississippi Street, St. Paul, including building, compressors, tanks, etc., transportation of men and materials, $20,000.00.

MISCELLANEOUS STRUCTURES.

Division Office Buildings	$ 47,500.00
Section Houses, Boarding Houses, Bunk Houses and Hand Car Houses	1,238,480.00
Ice Houses	120,850.00
Commissary Buildings	13,500.00
Stock Yards	302,000.00
Track Scales	100,000.00
Snow Sheds	488,000.00
Snow Fences	377,360.00
Stone Quarry and Crusher Plants	45,000.00
Tie Treating Plant	85,000.00
Miscellaneous Small Buildings	253,330.00
	$3,071,020.00

CONTINGENCIES.

10% of the following items:

Grading	$ 95,878,362.00
Tunnels	7,656,030.00
Bridges, Trestles and Culverts	19,385,741.00
Ballast	10,709,880.00
Tracklaying and Surfacing	7,927,147.00
Fencing Right of Way	956,415.00
Crossings and Signs	1,800,543.00
Interlocking and Other Signal Apparatus	586,886.00
Telegraph and Telephone Lines	1,879,992.00
Station Buildings and Fixtures	3,985,200.00
General Office Building and Fixtures	643,500.00
Shops, Engine Houses and Turntables	4,025,000.00
Water Stations	2,886,400.00
Fuel Stations	596,250.00
Grain Elevators	2,275,500.00
Storage Warehouses	34,800.00
Dock and Wharf Property	1,969,300.00
Gas Producing Plants	20,000.00
Miscellaneous Structures	3,071,020.00
10% of	$166,287,966.00
	16,628,797.00

To cover the increased cost of the work due to all unforeseen causes, such as fires, floods, tornadoes, accidents, strikes, etc.

STEAM LOCOMOTIVES.

The coat to reproduce Steam Locomotives and Tenders, including appurtenances and fixtures necessary to equip them for service, $16,210,048.00.

Made up as follows:

Class.	Number of Engines.	Weight of Each.	Value.
A-1	1	$ 80,420	$ 6,836
2	2	103,300	17,561
3	2	108,200	18,394
4	3	87,050	22,198
5	15	102,550	130,751
6	4	138,100	46,954
7	10	130,800	111,180
8	3	134,110	34,198
9	46	156,480	611,837
10	5	148,480	63,104
B-1	1	88,700	7,539
2	1	99,600	8,466
3	3	82,800	21,114
4	4	88,000	29,920
5	4	94,975	32,292
6	6	109,250	55,717
7	1	99,400	8,449
8	5	93,500	39,738
9	8	93,900	63,852
10	7	93,800	55,811
11	2	118,900	20,213
12	1	106,600	9,361
13	10	98,300	83,555
14	6	91,600	46,716
15	9	93,600	71,604
16	4	102,650	34,901
17	3	90,800	23,154
18	2	94,500	16,065
19	35	99,000	294,525
20	10	118,500	100,725
21	19	117,210	180,794
22	5	117,210	49,814
23	1	126,000	10,710
D-1	3	123,600	31,518
2	59	122,510	614,388
4	27	145,480	333,877
5	27	152,900	350,905
E-1	2	134,650	20,736
3	10	190,600	146,762

Class.	Number of Engines.	Weight of Each.	Value.
4	2	118,200	$ 18,203
E-6	15	193,000	222,915
7	19	161,200	235,836
8	20	206,200	317,548
9	2	165,280	25,453
10	8	192,215	118,404
11	1	160,600	12,366
12	2	157,600	24,270
13	2	147,000	22,638
F-1	65	159,050	796,045
2	5	165,980	63,902
3	1	190,450	14,665
4	1	169,400	13,044
5	15	225,400	260,337
6	20	233,300	359,282
7	10	225,600	173,712
8	125	227,140	2,186,223
9	25	230,950	444,579
10	1	229,850	17,698
G-1	16	169,500	208,824
2	19	190,350	278,482
3	50	211,150	812,927
4	10	211,750	163,048
5	7	230,475	124,226
H-1	6	242,900	112,220
2	34	255,900	669,176
3	1	255,600	19,758
J-1	49	234,800	885,900
2	100	234,800	1,807,960
3	1	234,800	18,080
K-1	10	233,800	180,026
L-1	22	374,800	634,911
2	45	318,000	1,116,870
VVE	3	105,133	24,286
	1,078		$16,210,048

Passenger Train Cars.

The total cost to reproduce the Passenger Train Cars on the System amounts to			$5,810,775.00
Made up as follows:			
38	Postal Cars	$ 221,612	
38	Baggage and Mail Cars	137,885	
47	Baggage, Mail and Express Cars	253,949	
48	Baggage Cars	204,803	
40	Baggage and Express Cars	195,247	
38	Express Refrigerator Cars	130,095	
36	Passenger and Baggage Cars	110,436	
163	Coaches—Second Class	843,041	
24	Smoking Cars	180,506	
144	Coaches—First Class	1,248,125	
32	Tourist Cars	260,023	
3	Dining and Parlor Cars	39,470	
27	Dining Cars	383,031	
18	Buffet Parlor Cars	196,043	
70	Sleeping Cars	1,091,780	
11	Observation Cars	183,560	
24	Official Cars	128,514	
1	Air Brake Instruction Car	2,655	
802	Cars	$5,810,775	

Freight Train Cars.

The total cost to reproduce the Freight Train Cars on the System amounts to			$32,464,727.00
Made up as follows:			
26,542	Box Cars	$19,704,510	
590	Refrigerator Cars	559,224	
49	Beer Cars	29,087	
12	Fruit Cars	6,609	
5	Hay Cars	2,012	
989	Furniture Cars	658,659	
2,005	Stock Cars	1,162,173	
4,046	Flat Cars	2,239,592	
828	Sand Cars	475,753	
624	Coal Cars	340,214	
1,401	Gondola Cars	854,155	
447	Ballast and Ore Cars	597,229	
5,390	Ore Cars	5,481,842	
603	Cabooses	353,668	
43,531	Cars	$32,464,727	

Work Equipment.

The total cost to reproduce the Work Equipment on the System amounts to		$1,481,772.00
Made up as follows:		
620 Ballast Cars	$374,937	
126 Boarding Cars	70,613	
23 Supply Cars	15,518	
17 Derrick Cars	39,889	
15 Derricks (Steam)	204,633	
3 Locomotive Steam Cranes	25,392	
34 Tool Cars	23,274	
12 Pile Drivers	64,720	
20 Steam Shovels	190,454	
10 Rotary Snow Plows	207,111	
9 Snow Plows	33,586	
49 Dozers	33,080	
1 Flanger	236	
14 Carpenter Cars	10,160	
21 Dirt Unloaders	98,948	
1 Hydraulic Car	372	
105 Cinder Cars	51,316	
61 Water Cars	31,061	
15 Steam Shovel Tanks	6,472	
1,156 Cars	$1,481,772	

Summary.

Steam Locomotives	$16,210,048.00
Passenger Train Cars	5,810,775.00
Freight Train Cars	32,464,727.00
Work Equipment	1,481,772.00
	$55,967,322.00

General Expenditures.

Legal, Organization and Other Expenditures.

Estimated at 3% of total cost of Road and Equipment.
3% of $404,565,750.00 = $12,136,972.00

Interest During Construction.

Estimated at 24% of cost of Road and 12% of cost of Equipment.
24% of $348,598,428.00 = $86,576,496.00
12% of $ 55,967,322.00 = 6,716,079.00

$93,292,575.00

STORES AND SUPPLIES ON HAND.

Total value of general material carried by storekeepers on the System, June 30th, 1908	$8,219,581.00

LINES UNDER CONSTRUCTION.

Value of Right of Way and Station Grounds on lines under construction	$ 258,656.00
Money expended on lines under construction except for Right of Way and Station Grounds	5,171,283.00
Value of material in stock on lines under construction	954,627.00
Value of terminal properties at Winnipeg and Tacoma	1,523,436.00
	$7,908,002.00

INTEREST IN TERMINAL RAILWAYS.

One-tenth Interest in Minnesota Transfer	$ 575,619.00
One-ninth Interest in St. Paul Union Depot Company	610,572.00
One-third Interest in Lake Snperior Terminal & Transfer Ry	116,725.00
	$1,302,916.00

INTEREST IN SPOKANE, PORTLAND & SEATTLE RY.

$21,827,521.00

Q. On the first page of this Exhibit, at the top, is shown a summary of the mileage of the entire system, is there not?

A. Yes, sir.

Q. And following that are 39 summarized items of the different elements that enter into the properties, and each of those summarized items is further dealt with later on in the exhibit and in more detail? That is the plan of the exhibit, is it not?

A. Yes, sir.

Q. Turning to the second page there is a more or less detailed statement of the mileage of the system in the different states through which it runs. It appears that there are 6,755.87 miles of main track of the Great Northern system, and certain additional main track of the Duluth Terminal, Minneapolis Western and Union Terminal Companies, making a total of 6,760.66 miles of main line track in the system. That is right, is it?

A. That is true.

Q. Now, the Duluth Terminal, the Minneapolis Western, and the Union Terminal—just state briefly what those are and what relation they have to the Great Northern property.

A. They are owned by the Great Northern—the Duluth Terminal being the line in Duluth; the Minneapolis Western being a switching line in Minneapolis; and the Union Terminal being a line in Sioux City, Iowa.

Q. And to what extent are those lines terminal facilities of the Great Northern system?

A. They afforded the Great Northern terminal facilities in those states, or partly so.

Q. There is a total of 147.57 miles of second track in the system and 1,620.75 miles of side track, making a total, including the terminal companies you have referred to of 8,528.98 miles of track.

A. That is true.

Q. Now that is actual mileage, taken from actual records, is it not?

A. Yes, sir; as it existed on the date of June 30, 1908.

Q. Following upon that I find on pages 3, 4, 5, 6, 7 and 8, a further detailed showing of the mileage in the different states. I will ask you how those mileages have been arrived at.

A. They are arrived at from actual records of the lengths of each portion of line specified, both for main tracks and side tracks.

Q. I notice on page 8 that the total mileage seems to apply to the main track mileage only. If I am correct about that it would seem that these pages, 3 to 8, inclusive, cover only main line mileage. Is that not true?

A. That is true. The side track mileage is not shown in detail for each portion of the line listed on pages 1 to 8.

Q. Turning to page 9, the first item shown there is "Engineering," which is estimated at three per cent of $338,445,076, which results in a sum equal to $10,153,352. What is meant by "Road Items?"

A. All of the items from 2 to 29, inclusive, being the items that go to make up the road-bed, of the right of way buildings, of the purchases, and practically all items except equipment.

Q. And the general expenses shown in items 34 and 35, and subsequent items thereto?

A. Yes, sir. Those are included under "General Expenditures."

Q. But the engineering has been figured on the items 2 to 29, inclusive?

A. Yes, sir; that is right.

Q. Now will you state briefly just the basis upon which you arrived at 3 per cent, and just what this item means?

A. It is to cover the cost of engineering in laying out the various lines and supervising the construction of them, and is found to be, from experience, very closely represented by 3 per cent of those construction items.

Q. Well, are you referring entirely to your own experience, or to your general knowledge of the sum of engineering experience, in providing a figure for the cost of engineering work in the construction of railroad lines?

A. I am referring to my own experience as well as the general experience of other engineers as to that item.

Q. You are familiar with the views of the profession on that subject, are you?

A. Yes, sir.

Q. And with that in mind what do you say as to 3 per cent being a conservative and generally accepted basis for figuring the cost of engineering for constructing railroads?

A. I think it is a very fair percentage and represents very closely the cost of that item.

Q. During your connection with the Great Northern Road, to what extent have you had to do with the making and checking of estimates for new work and also for reconstruction of lines?

A. I have had very largely to do with that—both with the preparation of the estimates and the supervision of the work, and a pretty fair knowledge of what the work has actually cost.

Q. You have been with the system long enough to have not only had to do with the planning out and making estimates for projected work, but to have also seen just how the results have worked out at the completion of the work and how the estimates have checked with the actual results, have you not?

A. Yes, sir.

Q. The next item on page 9 shows the figure relating to the right of way, station and terminal grounds, and that figure, as the exhibit states, was prepared by the right of way department and turned over to you for incorporation in this exhibit, was it not?

A. Yes, sir.

Q. And it is not a part of your work, or in your department, to deal with land matters embraced in that figure?

A. No, sir.

Q. Now the next item is grading, which corresponds with item 4 on the first page of the exhibit. Will you state briefly how that item of grading was arrived at, both as to quantities and prices?

A. The quantities for the various items of grading are made up, as far as possible from our records of the quantities that are actually in the road-bed in various parts of the system, as of that date, and the prices are based upon what work has cost us, and my judgment, and what it would cost us to reproduce the various classes of the grading work as specified.

Q. What have you to say as to the classification of different kinds of grading work shown on this page? Are those divisions of the different kinds of work customary divisions among the railroad engineers?

A. Yes, sir; and especially in the northwestern states.

Q. Now, in reference to the matter of the quantities, the number of acres of clearing—that, I take it, is substantially, actual from your records?

A. Substantially so.

Q. "Grubbing," the square rods shown there: Is that substantially from your records?

A. That is substantially from the records.

Q. When you say "substantially" I wish you would make it clear to the Master just what is meant.

A. I mean by that that wherever our records are complete those records have been used in taking these quantities. For a great many of the lines the records are not complete, and for those it was necessary to estimate from the maps and profiles the amount of clearing and grubbing that would be required.

Q. And what you have said is true also of grading, is it not?

A. It is true also of grading.

Q. Now, I want the master to understand just why there is a differential occasionally in records, not only of this Company, but perhaps of others. Do you know how long ago the beginning of the Great Northern lines was?

A. About 1862.

Q. And it was in 1879 that you came to the property, and

there were about 600 miles had been constructed prior to that time?

A. Yes, sir.

Q. In the state of Minnesota?

A. All, in the State of Minnesota.

Q. Will you state to what extent there are actual records of the early construction work of the original lines in Minnesota—just to give the Master and counsel on the other side an idea of the conditions in that regard.

A. The records of the earlier lines are very incomplete. Sometimes you can find a portion of the grading, but not a complete record of the grading, on the different lines. That applies also to a number of the lines which have been purchased—that is, were constructed by other companies and afterwards purchased by the Great Northern system. For those, a great many of them, no original quantities can be found.

Q. Can you state what percentage of the total grading shown on page 9 of this exhibit is taken from actual records?

A. We have 56 per cent as taken from actual estimates as returned for contractors.

Mr. Teal: Contract work? Actual contract?

The Witness: Yes, sir. And 26 per cent extra work done since construction, on record. Those two make a total of 82 per cent, which is the amount which was taken from our records. In addition to that, to secure the balance of the grading, 12 per cent has been taken from profiles, and 6 per cent has been taken from extra work done, of which we have no complete record.

Mr. Teal: Estimate?

The Witness: Estimate. Now, in regard to these profile estimates, I should say that for a number of the lines where we did not have the original quantities paid contractors, or the items of extra work done since construction, that we did have correct profiles of the line.

The Master: The original lines that were used.

The Witness: Yes, sir; generally original ones. I think in practically all cases original ones. And from those an estimate of the quantities in the road-bed has been made. That is what I refer to as 12 per cent, as taken from profile estimates.

Q. You say an estimate has been made from the original profile. Will you just explain how that estimate was worked

out, or, to shorten the matter up, you took the present situation, as compared to the original profiles, did you not?

A. It might be well to explain.

Q. I wish you would.

A. These profiles show a section of the ground—original ground surveys and the grade line, which would represent cuts and fills. Now from such a profile, from the tables of quantities prepared for engineers' use, the cubic yards of material to be moved from a certain cut to make a certain fill are estimated, and in that way the total quantities required to construct the road-bed, according to that profile, can be arrived at. In the absence of original estimates, that is about the only way that you can arrive at the quantities.

Q. Well, how would you characterize a profile estimate as compared to work on record?

A. Why, it is not nearly so good, not nearly so accurate, for the reason—

Q. It is not such an estimate as you have made for the last item of six per cent of extra work on record? It does furnish, in other words, some basis, by means of record, for computing quantities, doesn't it?

A. Oh, yes, sir. The only way you are likely to be far astray from the correct quantities is in the settlement which takes place and which you cannot tell much about from a profile.

Q. Well, you mean by the settlement of material put in that goes down into the ground? Now, that, you say, from a profile estimate, you cannot estimate how much of that has disappeared?

A. No, that is largely something that you must take from soundings, if there are any, of the particular piece of ground that has settled so badly, or from your knowledge of the conditions that existed.

Q. Well, how would that result? Against the interest of the railroad or in its favor, in so far as the quantities are concerned?

A. Well, the tendency would be, as a rule, not to get less quantities than would actually be required to carry out the work.

Q. Because of the subsidence that has gone on over a period of years in the quantities actually put in?

A. Yes, sir.

Q. I think your answer said the tendency—Read the last answer.

(Last answer read.)

A. That "not" should come out. The tendency would be to get less quantity, I intended to say.

Q. Now, 56 per cent of these quantities on the entire system is based upon actual estimates returned to contractors. Just explain that term. What do you mean by that?

A. Whenever a piece of grading is done by a contractor, the quantities of the various classes of material moved are measured and estimated, and the contractor is paid by a voucher, and from those vouchers these quantities have been taken.

Q. Well, are the quantities embraced in this 56 per cent the quantities that the railroad company and the contractor measured up and settled upon?

A. Yes, sir.

Q. The 26 per cent extra work on record: Will you just explain how that was arrived at and what it means.

A. That covers work done since construction in the way of bank widening, widening cuts, putting in new side tracks, extending side tracks, double tracking, filling bridges, taking out sags, and all other work done in the way of improving and extending the property since construction, and is generally work which has been done by the railway company.

Q. And is all shown on your records?

A. Yes, sir. The items there—26 per cent of the total is a matter of record.

Q. Now you have finally but six per cent of extra work which is not on record and which is an estimate. Will you explain just how and why you arrive at that figure.

A. That is put in from my knowledge of the various lines and the completeness of the records of the work done on those lines. For many of the lines the records of work done in the way of additional side-tracks, side track extension, bridge filling, bank widening, are incomplete. Some of them show nothing at all as having been done, and we knew that some work of that kind had been done, and this is put in from my knowledge of the lines and the work that has been done, I think, in addition to what is shown in the other three columns. It is not put in as 6 per cent on total. Each line has been gone over, and the addition which appeared to me fair has been made, and when we total it, it amounts to about 6 per cent of the total yardage. On some lines there has been no addition made—on many lines there has been no addition made.

Q. But this figure has resulted from a consideration of different lines and different parts of the system?

A. It has been made from a consideration of each particular line and what, in fairness, should be added to the quantities in the other three columns, if at all, to give the total quantity of grading on each line as it exists to-day.

Q. Have you the details which go to make up this 6 per cent estimate that you have made, so that they can be produced and examined by counsel on the other side, if desired?

A. Yes, we have details of the entire grading. The way it was made up—

Mr. Teal: You don't limit that to being examined by counsel, do you?

Mr. Holden: Anybody that the counsel might select.

Mr. Teal: That is better.

Q. Now, generally speaking, Mr. Hogeland, will you state whether or not the records that you have referred to, and which have been made use of for the preparation of this exhibit, are at hand and open to examination by the other side, to the fullest extent they may desire?

A. Yes, sir; I understand they are.

Mr. Teal: You have these different items segregated at the present time, haven't you? I mean the way you have arrived at these different estimates the papers are all segregated?

The Witness: The papers, of course, are not separated in a way that could probably produce one statement to show the thing without combining it, because it appears in a number of statements and estimates and papers, but it is not combined so as to show.

Mr. Teal: Well, the facts are all in your office.

The Witness: Yes.

Mr. Holden: To facilitate your examination of them in any way possible.

Mr. Teal: I thought possibly you had that 6 per cent. in one bunch—

The Witness: I haven't it together, but I could get it together.

Mr. Walter: So as to save sending these various papers back to the departments that he may hold in his department—

Mr. Holden: Any examination you desire to have made we will facilitate and give you assistance.

Mr. Teal: We understand that. All I want is that he will keep them together and not let them get away.

The Witness: Yes.

Q. Now, I did not ask you, and I am not clear in my own

mind, over how many of the items shown on page 9, entitled "grading," your testimony covered. Does that include—

Mr. Teal: Cover them all, wouldn't it?

Q. Does that include the riprap and retaining wall work, or did it stop with solid rock?

A. These percentages I have given you apply only to grading.

Mr. Teal: But this is all headed "Grading."

The Witness: What engineers more particularly call "Grading."

Q. Just identify the items that you refer to in your testimony.

A. It refers to the earth work, hard pan, loose rock and solid rock.

Q. You have already testified about the clearing and grubbing. Now passing on to the rip rap, how have the quantities of that been arrived at, with reference to your records?

A. That has been made up from a recent examination of the amount of rip rap as it exists on the line as taken from measurements made by the various resident engineers, and engineers under them, so as to show the amount of riprap that exists in the lines as of this date.

Q. And you have the reports made from these actual measurements that you refer to, for production, if necessary?

A. Yes, sir.

Q. Retaining walls: Please tell us about that.

A. Retaining wall and slope wall, taken from our records or measurements furnished by our resident engineers.

Q. If I understand you, as to riprap, retaining wall and slope wall, there is no estimate, but it has all been made from actual records, or from actual measurements recently made?

A. Yes, sir.

Q. Crib work; how about that?

A. Crib work has been taken partly from our records as such work was carried out during construction, and from my knowledge of what exists on the different lines.

Mr. Teal: Is that late work, or has it been going on all the time—the crib work? Does it cover, I mean, a construction for a period of a number of years?

The Witness: It covers what has been put in during construction, as well as what has been added to since construction.

Mr. Teal: It hasn't been put in in the last year or two, has it?

The Witness: Oh, no, sir; very little of that has been put in recently.

Q. To what extent is that item covered by record or actually taking into account of the work that is actually on the ground and subject to measurement and calculation?

A. As I said, that has been partly from the records and partly from my own knowledge of what exists, as well as reports which our resident engineers have made in regard to it.

Q. So to what extent would you say that that item was substantially an item of actual quantities of work done?

A. Why, I think it represents just as closely as possible what actually exists.

Q. Now, I would like to have you state the basis of the prices that you have applied to these different items and the reasons which have led you to arrive at these prices. Taking "Clearing": You show a price of $82.50 per acre.

A. That is, the entire prices are based on contract prices for carrying out such work to which must be added any transportation charges for men, outfits and material, and of extra work which would necessarily go along with the different classes of work and would not be covered in a contract price.

Q. I wish you would state, generally speaking, what the difference is between contractors' prices and the extra work which is not included. I mean, limiting this question to clearing, but I want you to state generally as to this kind of work—just what is embraced in those two items.

A. The ordinary contracts provide for the Railway company to furnish free transportation to contractors, and the prices which they make are based on that; so that in putting a price down opposite each item it is necessary to take that into consideration to make a certain increase in the price as paid contractors to cover the transportation which the Railway Company usually furnishes the contractor.

Q. Now, right there: This transportation you speak of has reference to this kind of work, clearing, grubbing, grading and rock work, if done by contract, and also certain other classes of work, such as ballasting; but you are not now speaking, in using the word "transportation" of free rates on things such as rails, or anything of that kind?

A. Not at all.

Q. Just what do you mean in dealing with this kind of items in the term transportation?

A. I had reference to the transportation of the contractor's outfits, supplies and men.

Q. From what point to what point, generally speaking?

A. From whatever point is necessary to secure the outfits and the men to the work.

Q. Would it be from a point off your line, or do you mean from a point on your line, out to the front where the work is to be done?

A. That would depend on where the contractor's outfit originated. It would depend altogether on the nature of your arrangement with the contractor.

Q. Then if I understand you, this term "transportation" means broadly the furnishing, free to the contractor, transportation for his plant and his men and his materials to the place where the work is to be done? That is right, is it?

A. Yes, sir; that is what I mean.

Q. And does it also have reference to transportation of men and materials during the progress of the work?

A. Yes, sir; whatever is required to carry on the work.

Q. The men in front who may quit and leave the work, and other men who may have to be provided to go and take their places—Does it cover that?

A. Yes, sir; as well as supplies for the up-keep of these men.

Q. You say the contractor makes a bid or a price on the basis of the railroad company providing him these items of transportation, without cost to him. Is that a part of the extra bills over and above the contractor's price—this transportation item?

A. That is a part of the increased cost over the prices paid contractors. In addition to that there would be any bills for extra work properly chargeable to grading which could not and are not paid under the contract. For instance, ditching, road changes, and many items of that kind, which have to be taken and are paid for as an extra bill, properly chargeable against grading, but are not covered by contract price.

Q. Just illustrate that about a road change. Why is that an extra bill, and why doesn't the contractor take care of that in his price? What does it mean?

A. There are many pieces of work of that kind which a contractor cannot provide for in making a price per yard,

and all such work is carried out and paid for at actual cost, plus probably ten per cent., and it is paid for in that way; it is not paid for on a yardage basis, because it cannot well be covered in that way.

Q. What do you mean by a road change?

A. Wagon road change, I had reference to. That is one of the things that enters into it.

Q. Well, I say, what do you mean by a wagon road change? Just explain that.

A. Any wagon road changes that may be necessary to permit of the construction of the railroad.

Q. You mean a public highway crossing in the country?

A. Yes; where it may run parallel or alongside of the railroad and has to be changed.

Q. That kind of work and other kinds you refer to is not included in the contractor's bid made to the Company, for doing the work?

A. Not as a rule. Sometimes that class of work is paid for by the yard; but as a rule it is paid for as an extra bill.

Mr. Teal: Do you know of any railroad contracts that are made where that very extra work is not provided to be done, and to be paid for in the engineer's estimate plus about ten per cent. profit?

The Witness: Let in that way, did you say?

Mr. Teal: Yes. Isn't that the way all contracts are let? Haven't you got printed forms covering that very thing? In other words, doesn't every contract provide that the contractor shall do the extra work, that it shall be measured by the engineer, who shall be the sole judge of the cost, and he is paid ten per cent. over the cost for doing it?

The Witness: I don't think it is put that way in the contract. It may be in a great many contracts. We very seldom put anything of that kind in ours; but that is the way it would be done.

Mr. Teal: That is what I thought. That is the way we always did it—

The Witness: It is the reason why the yardage returned to the contractors in the road-bed does not cover any other items of that kind.

Mr. Teal: That is true; but it would eventually come out in the wash in his contract when he was finally paid off, wouldn't it?

The Witness: It would be paid for as an extra bill.

Q. That is the point,—You made it very clear—that while

the contracts may provide that these kinds of extra work shall be done by the contractor and the price fixed, they are not included in the yardage price?

A. Very often not. I am not saying that sometimes there are not part of them included. But I wanted to explain that that is one of the items of extra work which makes it necessary, when you want to cover the entire cost of the grading, to increase the price which you would pay the contractor per yard. There is another item which was not mentioned, and that is the overhaul.

Q. Just explain what that means.

A. In practically all contracts the price fixed covers the moving of the material a certain distance—possibly a thousand feet. Any material hauled over the thousand feet is paid for extra at so much per yard per hundred feet. That is what we call overhaul. And not being shown in the grading items here it is necessary to cover that by an increase in the price paid contractors per yard.

Q. Who determines whether the contractor shall haul out the material that he is taking out of a cut, beyond the free limit that the contract requires him to haul it?

A. Well, that is at the engineer's discretion.

Q. If I understand it then, where the contractor is making a cut the contract ordinarily provides that he shall haul that material a certain distance and dump it, without extra charge, is that right?

A. Yes, sir.

Q. Now if the engineer desires the contractor to haul that material and dump it at another place beyond that limit, that is called overhaul, and the railroad has got to pay the contractor a certain rate which is usually covered by contract for the extra distance the engineer wants it hauled, is that right?

A. Yes, sir; that is right.

Q. And to the extent that the engineer asks for or has asked for an overhaul, it finds its location in extra bills over and above the contractor's profit, is that right?

A. Not as an extra bill. It comes in as a part of his final estimate. There are many thousands of yards of overhaul that are paid for in that way.

Q. Well, I was inaccurate then. I simply wanted to locate where it finally falls among the class of items. It is included in the yardage price?

A. No, it is not included in the first yardage price.

Q. It could not be under those circumstances?

A. The yardage price covers the handling of the materials a certain distance, generally a thousand feet. Any handling of the material beyond that is paid for as an overhaul; the result being that after a piece of work is taken and the overhaul has been measured up it practically amounts to an increase in the price per yard for the material, sufficient to cover that overhaul, although it is paid for at so many thousands of yards hauled 100 feet over the haul limit at a certain price per yard.

Q. Now this method, as manifest in the term "overhaul"—is that a current method to-day among railroad engineers for construction work?

A. Yes, sir; it is in the Northwestern states.

Q. Turning back to the prices shown on page 9, you stated how you arrived at $82.50 for clearing, and I will ask you to state whether that price, in jour judgment, fairly represents the cost as of June 30, 1908, of doing the clearing work embraced on the Great Northern lines of 31064 acres?

A. Yes, sir; I believe it does; taking all classes of clearing into consideration.

Q. And to what extent does that rest upon your actual experience in recent years?

A. It is based on our experience in recent years.

Q. You mean what you have actually been paying for clearing work?

A. Yes, sir; it based on what we have actually been paying for clearing work.

Q. And is that true of grubbing?

A. It is.

Q. And to what extent is it true of the other prices you have shown there?

A. It is true of all of the other prices shown under the "Grading" heading.

Q. Now have you prepared another exhibit relating to the cost of grading, which you can offer in evidence, in connection with the prices you have shown here for grading?

A. I have.

(Witness produces paper which was marked "Complainants' exhibit 16 (Hogeland)").

COMPLAINANT'S EXHIBIT 16 (HOGELAND).

GREAT NORTHERN RAILWAY.

COST OF GRADING.

CONTRACT GRADING QUANTITIES AND PRICES.

Built.	Line.	Mileage.	Earth.		Hard Pan.		Loose Rock.		Solid Rock.		Total Yardage.	Ave. Cont. Price.	Total Charges.	Ave. cost per Yard.
			Cu. Yds.	Price.	Cu. Yds.	Price.	Cu. Yds.	Price.	Cu. Yds.	Price.				
1898	Cloquet to Boyleston.	126.12	3,842,846	19.4	66,201	40.0	35,700	45.0	52,423	$1.00	3,997,170	22.5	$ 1,411,645	35.3
	Deer River to Fosston.													
1899	Hibbing to Virginia	18.78	437,632	22.8	25,903	37.9	18,617	42.9	8,318	.999	490,470	25.7	191,223	39.0
1901	Brookston to Ellis	46.49	991,524	20.2	44,952	38.8	24,400	44.1	8,948	1.115	1,069,824	22.4	396,339	37.1
1902	Jennings to Boundry Line	50.98	608,850	18.7	466,559	27.7	110,921	38.2	126,578	.95	1,312,908	31.0	644,694	49.1
	Marcus to Republic	69.38	1,056,929	19.3	664,605	34.8	135,726	40.0	535,524	.943	2,392,784	41.6	1,230,323	51.4
	Kelly Lake to Nashwauk	10.64	146,397	30.9	35,746	38.0	9,135	43.0	4,456	1.15	195,784	34.7	99,983	51.1
	Boundary to Swinton	43.38	552,712	20.5	1,160,457	32.5	302,027	40.0	304,413	.938	2,319,609	38.6	1,116,366	48.1
	Laurier to Danville	16.50	327,911	21.1	189,416	35.0	53,790	40.0	75,607	1.00	646,724	36.0	287,999	44.5
1903	Souris to Westhope	16.41	237,086	14.1	3,657	35.0					240,743	14.5	73,954	30.7
	Granville to Mohall	46.97	694,357	13.3			260	35.0	125	.85	694,742	13.4	145,255	20.9
1904	Columbia Falls to Rexford	69.18	1,010,675	20.0	2,591,720	35.0	485,001	40.0	1,170,401	.893	5,257,797	44.7	3,341,970	63.6
	Thief River Falls to Greenbush.	41.09	468,598	16.4							468,598	16.4	109,854	23.4
	Mohall to Sherwood	14.85	164,057	13.1							164,057	13.1	42,361	25.8
	Edmore to Munich	24.87	348,851	16.9	19,936	41.5	69	39.3			368,856	18.2	122,262	33.2
	Swinton to Fernie	9.82	91,969	20.8	139,567	47.7	8,147	40.0	38,780	.95	278,463	45.2	168,629	60.6
	Grand Forks to Phoenix	24.63	42,895	19.6	253,173	35.0	86,359	40.0	621,524	.95	1,003,951	71.9	852,604	84.9
	Granby Smelter Line	4.74	91,907	20.6	69,128	35.0	8,941	40.0	11,427	.95	181,403	31.7	73,468	40.5
1905	Towner Line	46.13	485,193	13.6							485,193	13.6	98,905	20.4
	York Line to Thorne	34.68	454,797	13.7							454,797	13.7	96,613	21.3
	Westhope Extension	12.76	115,059	14.3							115,059	14.3	28,449	24.7
	Forbes Extension	13.36	168,240	14.4			192	37.8			168,432	14.5	42,877	25.4
	Munich Extension	20.53	234,480	15.0					100	.90	234,580	15.1	55,999	23.9
	Curlew to Midway	14.52	182,133	18.0	87,207	35.0	15,619	40.0	43,279	.90	328,238	33.0	172,167	52.5
1906	Greenbush to Warroad	44.00	351,480	18.1							351,480	18.1	71,759	20.4
	Midway to Molson	28.89	212,512	19.9	453,184	35.0	280,679	40.0	947,714	.925	1,894,089	62.8	1,389,195	73.3
	Boundary to Keremeos	18.20	150,628	19.2	139,111	35.0	68,491	40.0	56,947	.925	415,177	38.0	377,040	90.8
	Thorne to Dunseith	7.61	122,432	15.7							122,432	15.7	22,289	18.2
	Molson to Orville	27.82	244,095	20.1	661,308	35.0	139,492	40.0	274,726	.90	1,319,621	44.2	709,427	53.7
	Sioux City to Ashland	103.15	2,821,252	17.6	134,903	35.0	720	40.0	2	.80	2,956,877	18.4	718,848	24.3
1907	Kelly Lake to Fermoy	23.40	656,642	36.0	62,083	42.0	11,277	47.0	2,653	1.15	732,655	36.7	402,648	55.0
	Aneta to Devils Lake	57.72	1,364,434	16.3	1,464	35.0	12,002	40.0	9	.90	1,377,909	16.6	312,701	22.7
	Orville to Boundary	20.64	202,787	18.8	279,498	35.0	111,601	40.0	316,765	.941	910,651	52.5	557,779	61.0
	Crosby Line	89.16	1,238,996	17.1	15,006	30.6	130	35.0	827	.80	1,254,959	17.4	354,409	28.2
	Billings & Northern	194.14	5,980,299	20.7	1,509,529	35.3	1,068,164	41.5	1,404,282	.815	9,962,274	23.7	4,479,114	44.4
	Portage la Prairie Line	77.01	823,525	15.4	400	35.0					823,925	15.4	214,306	26.0
	Brandon Line	69.45	1,549,848	20.3	12,548	30.0	141,998	44.8	5,498	.826	1,709,892	22.6	578,228	33.8
	Morden Line	15.25	201,408	15.0							201,408	15.0	35,797	17.8
	Totals	1,553.20	28,675,436	19.3	9,087,261	34.6	3,129,458	40.7	6,011,326	.95	46,903,481	33.4	$21,027,679	44.8

TOTAL CONTRACT QUANTITIES ON ALL ABOVE LINES.

	Cu. Yds.	Cost.	Average per yd.
Earth	28,675,436	$ 5,542,917.03	19.3
Hard Pan	9,087,261	3,150,621.83	34.6
Loose Rock	3,129,438	1,276,484.00	40.7
Solid Rock	6,011,326	5,711,599.41	95.0
Total	46,903,481	$15,681,622.27	33.4

NOTE.—The Column "Total Charges" shows all charges against "Grading" for each of these Lines, from the Construction Books.

Chief Engineer's Office.
April 12th, 1909.

Mr. Holden: We offer in evidence "complainants' Exhibit 16 (Hogeland)".

Q. Will you just state what Hogeland Exhibit 16, is, Mr. Hogeland; what it covers?

A. It represents the cost of grading on various lines built by the Great Northern Railway, from 1898 to 1908, inclusive, aggregating 1553.20 miles.

Q. Where was this construction?

A. This construction was on various parts of the system, in Minnesota, North Dakota, Montana, Washington, Manitoba and British Columbia.

Q. Now, proceed, Mr. Hogeland, and state just what is shown on that exhibit, and what bearing it has upon your prices shown on your exhibit No. 15, for grading work.

A. The first column shows the year in which each line was built. The second column shows the name of the line. The third column shows the mileage. The fourth column shown the cubic yards of earth. The fifth column shows the price paid contractors for such earth. The sixth column shows the cubic yards of hard pan. The seventh column shows the price paid contractors for such hard pan. The eighth column shows the cubic yards of loose rock. The ninth column shows the price paid contractors for such loose rock. The tenth column shows the cubic yards of solid rock. The eleventh column shows the price paid contractors for such solid rock. The twelfth column shows the total yardage. The thirteenth column shows the average price paid contractors for all material. The fourteenth column shows the total charges against grading from the construction books, for each of these lines. The fifteenth column shows the average cost per yard, which is arrived at by dividing the total charges from the construction books by the total yardage.

Q. Now to what extent are these figures actual figures taken from your records?

A. They are taken from our records.

Q. Wholly so, are they not?

A. Yes, sir.

Q. Now you show that you paid an average of 19.3 cents to contractors for earth work. That is an actual payment made to the contractors for the work shown actually on this exhibit?

A. Yes, sir; those are the actual average prices paid contractors for that amount of earth work.

Q. I wish you would proceed and analyze the bearing of those prices upon the prices you have shown on page 9 of your exhibit No. 15, where you have shown your prices for earth, hard pan, and so on.

A. The summary at the bottom of each column gives the totals. I have also made a summary at the foot of the sheet showing the total contract quantities on all of the above lines. At the foot of column 13 is shown 33.4 cents as the average contract price for all material. At the foot of column 15 is shown 44.8 cents as the average cost per yard of all material. The difference between these two—11.4—shows approximately what should be added to contract prices to cover the entire cost of the grading. By adding that to the average contract prices it brings the earth prices to 30.7 cents per yard; hard pan to 46 cents; loose rock to 52.1 cents; solid rock to $1.06 4/10. The prices as used on page 9 of Exhibit 15 for earth, hard pan, loose rock and solid rock, were applied before this exhibit 16 had been prepared. The comparison will show that it practically justifies the prices which have been used.

Q. In other words, in your Exhibit 15 on page 9, you estimated for earth work, on your judgment, that 31 cents was a fair price, including all that it cost chargeable to earth work per yard?

A. Yes, sir.

Q. And after you had made up this table of grading prices, on page 9, this exhibit 16 was worked out of the actual records for the actual construction from 1898 to and including 1907, and adding the addition between average contract price and the average cost per yard to the actual price of 19.3 cents paid contractors, you found what figure?

A. 30.7 cents as against my 31 cents.

Q. And the same method of computation, for the purposes of comparison bears on each of the other items of hard pan, loose rock and solid rock?

A. Yes, sir. I desire to say that so far as earth is concerned, my judgment is that the proportion of the cheaper lines in this exhibit 16 is much greater than should be applied to the entire system, resulting in a lower price, as paid contractors (19.3 cents) than would be fair to apply to the entire system. In other words, if you glance down column 5 you will notice many lines where the grading, as paid contractors for earth is down to about 13 cents a yard. There

are quite a number of those lines in North Dakota, built within the past ten years, which, in my opinion, bring the average of the earth work, as shown at 19.3 cents, lower than it should be to cover the entire system.

Mr. Teal: I notice only three charges in there at 13 cents, on the entire line.

Mr. Holden: Well, some at 14.

The Witness: That is the principle that I have in mind. I simply wanted to illustrate it.

Q. When you say 13 you have reference—

A. Well, down in that neighborhood—13 and 14 cents.

Q. About 13 and 14; in that general class of charges?

A. Yes. And it is fair to say this, too: that this covers grading going back for a period of ten years, when grading prices were somewhat lower than they are at the present time, or in 1908. And I think therefore that 19.3 cents is a lower average price than the earthwork on the system could be let for to contractors, and the railway company to pay the freight charges and the overhauling and extra bills.

Q. At the present time?

A. At the present time.

Q. Or rather, more accurately, as of June 30, 1908. Now, what have you to say as to comparison between the hard pan price and the price you show on page 9.

A. The average price paid contractors for hard pan is 34.6 cents. Adding to that the 11.4 cents as the increased cost, it brings it up to 46 cents, and I have used a price of 45 cents. For loose rock the same method brings a price of 52.1 cents, and I have used 55 cents. For solid rock the same method brings a price of $1.06-4/10, and I have used $1.10. So far as the loose and solid rock is concerned, I consider that we are justified in using a somewhat higher price on account of so much of this work being carried out a number of years ago when labor was considerably lower, and, furthermore, to the fact that a considerable portion of our rock work is in Minneapolis, Spokane, where the cost would be considerably greater to carry it out than it would be out in the open where blasting could be resorted to without any hindrance. I feel, therefore, that the price I have used for loose rock and solid rock is justified even on the showing on this Exhibit No. 16.

Q. What would you say as to your price of $2.00 for rip rap?

A. That I think is a reasonable price and is justified by what the work actually costs us.

Q. At the present time, and within the last year or so?

A. Yes, sir.

Q. And is that true of $9.00 for retaining walls and $3.50 for slope walls?

A. It is.

Q. You have used your current experience in paying for that class of work in making up that figure there?

A. Yes, sir.

Q. And how about the price of $765,000 paid for crib work?

A. That is based on the amount that exists and the cost of reproducing it and is not on a lineal foot basis, because crib-work varies so in height and extent, you have to put in a lump sum to cover it.

Q. Taking the total there of $95,878,362, what have you to say, in your judgment, regarding that figure?

A. I think that represents very fairly the cost of reproducing the class of work that is covered by that.

Q. Now your next item covers tunnels. You have different kinds of tunnels on the system, as shown at the foot of page 9 of the table, and I wish you would state just how you arrived at the number of feet.

A. The number of feet is arrived at from actual records of the length of each tunnel.

Q. And the prices.

A. The prices are arrived at based on the cost of carrying out that class of work in 1908, and shown as for unlined single track tunnel at $70 per foot, and that covers the excavation of the tunnel proper, the enlargement of the section required to put in the timber, the timber, and the placing of it, and the transportation of men, tools, powder and material. My remarks in reference to that applied to timber lined tunnel. The unlined tunnel has no timber in. I got ahead of my story a little on that. The concrete lined tunnels shown as the Boulder Tunnel, which is between Helena and Butte, and the Cascade Tunnel, through the Cascade Mountains, which have a separate price—the first of $175 a foot and the second of $195—are based on 1908 prices for tunnel excavation, concrete lining, transportation of men, tools, machinery and materials.

Q. And the last item.

A. The last item is a double track tunnel at Seattle, owned jointly by the Northern Pacific and the Great Northern, and is based on the actual cost of the tunnel having been built in very recent times.

Q. What have you to say as to the total figure of $7,656,-030?

A. That represents, as fairly as I think it is practicable to do it, the cost of reproduction of tunnels on the system, as they existed at that date.

Q. And that the current price is as of that time?

A. Yes, sir.

(A recess was here taken until 2:00 o'clock P. M.)

Afternoon Session.

W. L. DARLING, recalled for further cross-examination, testified as follows:

By Mr. Teal:

Q. There were just one or two things that I wanted to know about, Mr. Darling. In connection with this exhibit that was prepared under your direction and filed this morning, showing the estimated cost of certain pieces of road and the actual cost: Those are nearly all double track roads, aren't they?

A. It is shown there exactly what they are.

Q. What does that mean, where it says "Main track," "Second track," and "Second track work?"

A. Main track is new track; second track is new work; second track work is in connection with raising grades on second track. It is old second track work, and has been revised.

Q. Then in work of that character, that is of course very much more expensive than a single main track, isn't it?

A. Yes, sir.

Q. On these roads where it says, "Valley City change of line, main track and second track," and "Lake Park to Glyndon" and the "White Pine Hill Grade Revision," was that extra heavy work or not?

A. Yes, sir; it was. Heavy work.

Q. You wouldn't call that an average of the system?

A. No, sir; I wouldn't. That is not an average of the system of the main line proper.

Q. That is what I mean.

A. Though it is side tracks, yard and facilities.

Q. In your original approximate estimate here, and in this actual cost, those are based upon estimates that you made and submitted?

A. Yes, sir.

Q. And those are the actual items here?

A. Yes, sir.

Q. And you have the actual items paid, haven't you?
A. Yes, sir.
Q. And your actual estimates?
A. Yes, sir.
Q. I would like to have you furnish what totals make those.
A. You mean the details of those totals.
Q. Yes. In other words, when I was asking for this, I wanted to ascertain what you did pay for rock work.
A. Yes, we have all those.
Q. That is what I supposed. And that can be furnished without any difficulty, can it not?
A. Yes.
Q. I would like to have that. And the same with reference to your estimate. I want to see what you estimate earth work and rock work and loose rock, and what you let the contract for, and what these items make.
A. Yes, sir.
Mr. Donnelly: Let us understand that. You want, as to each of those items, a complete, detailed statement of his original estimate, and a complete detailed statement of the amounts, actually paid?
Mr. Teal: Yes, sir.
Mr. Donnelly: As to each of these pieces of property.
Mr. Teal: Yes, if you please.
Mr. Donnelly: You say that can be readily obtained?
The Witness: Well, of course it takes some little time. We have all the information, though. It may take two or three days to get it up.
Mr. Teal: Well, that will be satisfactory. It can be sent to us.
Mr. Donnelly: Well, we can put it in when we start taking your testimonly.
Mr. Teal: We would like to have it before then. Then we would save time. That was the reason.
Mr. Donnelly: All right.
Mr. Teal: He can send one to Mr. Walter and one to me.
Q. Now in this estimate of Floating Equipment, I notice you have itemized it here: "Transfer Steamer Tacoma," "Auxiliary Barge" and "Ferry inclines at Kalama & Goble" at $612,400.
A. Yes, sir.
Q. That is the same item that you used in the exhibit on Floating Equipment, isn't it?

A. Yes, sir; I think it is. I don't remember just how that was carried in that Spokane rate case, but I think it was.

Q. Well, it was carried as Floating Equipment.

A. Of course it includes any work done since that.

Q. Now just simply to get at this right: This is the cost of reproducing, as of April, 1909?

A. Yes, sir.

Q. Now, in April, 1909 (that is of this year) the bridge across the Columbia River from Vancouver was about completed, wasn't it, substantially?

A. Yes, sir; practically.

Q. And the bridge across the Williamette River at Portland was about completed?

A. Practically; yes, sir.

Q. And that did away with this transfer work at Kalama by Steamer Tacoma?

A. No, sir; I don't think so.

Q. But that is the purpose of the bridge at Vancouver and the bridge at Portland, isn't it?

A. No, sir.

Q. You think, then, that the steamer at Tacoma and those barges would be continued to be used after you get the bridge?

A. I could not say as to that. I could not give you any satisfactory answer.

Q. So all this statement of yours that has been prepared covers all items of a like character of any material or equipment or anything of the kind that is on hand, is to-day, on the Northern Pacific?

A. At the transfer?

Q. No, I say that that would substantially represent the way in which the estimates prepared, everything that is on hand to-day, in connection with the Northern Pacific, is being valued at its actual value to-day?

Mr. Donnelly: Everything that is in use.

The Witness: Everything that is in use, yes.

Q. And the fact that the Steamer Tacoma was built 20 or 25 years ago—no allowance is made for that, of course?

A. No, sir; none whatever; no allowance for depreciation.

Q. There was one other thing I wanted to ask you about: In your Spokane exhibit I notice that you made an allowance of 4 cents per ton per mile for hauling rails. You didn't mean 4 cents, did you?

A. Four mills per ton per mile.

Mr. Holden: Mills.

Mr. Teal: That is what I say.

Mr. Holden: You said cents.

Mr. Teal: I know it. That is just what I was correcting. That does read 4 cents per ton per mile, doesn't it?

The Witness: No, sir.

Q. What does it read?

A. It reads 4/10 of a cent per ton per mile.

Q. I read it wrong. What you mean is four mills?

A. Yes, sir.

Q. And that was the estimate you used as the cost of the movement of rails at that time?

A. Yes, sir.

Q. Just one question about this Floating Equipment: The rolling stock is figured on the basis as though it were entirely new rolling stock?

A. Yes, sir.

Q. Now in the Spokane case you put in a number of detailed exhibits in addition to this, did you not?

A. Yes, sir.

Mr. Teal: I suppose copies of those can go in, so as to save you the trouble of copying them in.

Mr. Donnelly: Yes.

The Witness: I guess I didn't understand you. Do you mean the Spokane estimate that I just gave you?

Mr. Teal: No, no. I said, "In the Spokane case, in addition to this statement."

The Witness: What is that statement?

Mr. Donnelly: That is the copy of the statement.

Q. You put in a number of details that went with this statement.

A. Possibly. I am not sure.

Mr. Donnelly: I don't think there was anything beside that that went in with Mr. Darling.

Q. Didn't you make us a statement showing the cost of one mile of main track?

A. Yes, sir.

Q. And the cost of one mile of branch lines?

A. Yes, sir.

Q. And the cost per cubic yard for grading?

A. Yes, sir.

Q. The cost of tunneling, bridging, et cetera?

A. Yes, sir.

Q. And at the time those were made, those represented your ideas, as accurately as possible, of the cost of building the line?

A. Of those specific items.

Q. Yes.

A. If you will read that estimate carefully you will see that I have used that cost of the branch line of road to cover the cost of ties, rails and ballasting. It had nothing to do with grading, bridging or the facilities.

Q. Whatever they purport to represent, represented your honest idea at the time?

A. Except the depreciation and the traffic charges.

Q. But when you put in the cost of building a mile of track you did not put in depreciation?

A. No, not depreciation, but traffic charges were in there.

Q. Well, can I put it this way, then: Will this cost of one mile of main track—or did that cost of one mile of main track, at the time you prepared it, represent honestly your idea of the cost of building, in 1907, a mile of main track of the Northern Pacific Railway?

A. Yes, sir; except for the tariff rates.

Q. Except for what tariff rates?

A. Tariff rates for hauling material.

Q. With that exception, that represented your honest conviction as the cost of building a mile of main track of the Northern Pacific at that date, and of the branch lines?

A. Yes, sir; what is called one mile of main track.

Q. Yes. And that purports to represent your honest conviction?

A. Yes, sir.

Mr. Teal: That is what I want to know. We can introduce that afterwards without bothering you to recopy it. That will be all.

By Mr. Donnelly:

Q. Let me understand in regard to this statement showing the approximate estimates and the actual cost of various pieces of railroad. Were those all double tracks?

A. This was a double track (indicating).

Q. That is, Lake Park to Glyndon?

A. Yes, sir. This "Valley City Change of Line" was a single track, with the exception of a mile and 4/10 of second track which we built in connection with it. "Livingston to Muir" was double track. "St. Regis to Paradise" was a single track. "White Pine Hill" was a single track. "Garrison to Missoula" was a double track. The "Mandan South" estimate was on a single track.

By Mr. Walter:

Q. Did this include station buildings?

A. What?
Q. This estimate.
Mr. Donnelly: Those various pieces of track.
A. No, no equipment then.
By Mr. Teal:
Q. Does it include station buildings?
A. Yes, sir.
Q. That is the reason I wanted the itemized statement showing what it is.
A. Everything that is necessary. Now, for instance, take the line from Lake Park to Glyndon: There would be no station on that, because they were on our own line. "Garrison to Missoula" was practically on our own line. There would be very few station buildings there, and none except what we could have carried from one place to another.
Q. Your detailed statement showed all that?
A. The detailed statement showed the whole thing.
Q. That is the reason I did not want to examine you about each item, because it will show the whole thing.
By Mr. Walter:
Q. In the most of this, Mr. Darling—for instance, Lake Park to Glyndon, and White Pine Hill Grade, it was work which while very expensive was made to lessen cost of operation?
A. Yes, sir; and for increasing the capacity of the railroad.
Q. Yes, where you already had a railroad. But this work at this expense you could cut down grades and make a much better road for handling business?
A. Well it was done primarily for increasing the capacity to get a railroad to handle the business on, and incidentally to decrease the value of the operation.
Q. But it was very expensive work—far more than the average?
A. Well, it is heavy work; yes, sir.
Mr. Teal: It will be understood that when this comes in it will be marked as a Defendant's Exhibit by the stenographer.
Mr. Walter: And as to all papers that Mr. Darling has, he can keep them just as they are, without returning them to their respective divisions, so they will be accessible to our representatives.
Mr. Donnelly: Whatever information there has been covered by you, Mr. Darling, in the preparation of these statements, just keep it where it is, so, in case the representatives of the defendant so wish they can look it over.

Mr. Darling: We have it in our office complete. It will stay there.

Mr. Walter: All right; that is what I want.

ALBERT H. HOGELAND, resumed, and his direct examination continued as follows:

By Mr. Holden:

Mr. Hogeland, the next item on Exhibit 15 is "Bridges, trestles and culverts." The first bridge is the stone arch bridge in Minneapolis, and the items following that are divided between steel and wooden bridges and permanent and timber culverts. How are the lineal feet shown in those different items arrived at?

A. They are made up from our records.

Q. Actual number of feet showing what?

A. Showing what actually exists.

Q. How do you arrive at the price of $857,000 for the stone arch bridge in Minneapolis?

A. That is made up from a detailed estimate of the excavation, coffer-dam work, masonry, and in fact all of the items of work that enter into the structure.

Q. At what prices?

A. At prices prevailing in 1908.

Q. Now, your prices for steel bridges with masonry: Will you state how the prices were made up for that item?

A. Those were made up as of 1908 prices.

Q. Well, what was the base price per ton for steel?

A. $60 per ton at St. Paul, to which was added 60 cents for mill and shop inspection; $12.50 per ton for erection; $1.50 per ton for painting; $5.40 per ton for work train service, use of equipment, transportation charges, &c., making a total of $80.00 per ton. That was the unit price used for ordinary plate girder spans. For truss spans an additional charge of $10 per ton was made, based on $5.00 additional for the steel laid down at St. Paul, $2 additional for erection, and $3 additional for false work, making a total of $90.00 per ton for truss spans erected.

Q. To what extent are those different cost figures based on the actual experience of the railroad company during the year 1908?

A. They are based on our actual experience during that and preceding years, when the conditions are practically the same.

Q. Now, as to the masonry prices: What figure do you place per cubic yard for first-class masonry?

A. We used $10.50 per cubic yard for first-class masonry, and $7.00 per yard for second class masonry.

Q. Do you figure a price per yard for concrete?

A. Yes, sir; figure that at $7.00 per yard.

Q. How do you arrive at those figures?

A. Those are based on our actual experience during the year 1908 as well as preceding years.

Q. Under similar conditions?

A. Similar conditions; yes, sir.

Q. And by "actual experience" you mean actual prices paid during that period for that kind of work?

A. Yes, sir.

Q. And were those prices paid in the ordinary course of railroad construction?

A. Yes, sir; they were.

Q. Now, does what you have said about the prices apply to wooden bridges and permanent culverts and timber culverts?

A. Yes, sir; we applied the prices prevailing in 1908.

Q. And the numbers of permanent and timber culverts, and the quantities, how were they arrived at?

A. They are from our records of what actually exist.

Q. Now, passing to the subject of ties: You have divided ties into three classes—ordinary track ties, switch ties and crossing ties. Explain the way in which you arrived at the number of track ties.

A. The number of track ties are taken at 3000 per mile for main tracks and 2640 per mile for side tracks, and from that is deducted the number of ties which would be used as switch ties at switches and bridge ties on bridges—the switch ties and bridge ties being considered as a separate proposition. This results in a total of 23,583,120 cross ties.

Q. Was the figure of 3000 ties per mile an estimate, or to what extent was it based on actual count?

A. That was made from count at various places, various divisions, so as to get an average per mile for different parts of the road.

Q. And is that true of the lower figure you spoke of for side tracks and branch lines?

A. Yes, sir; as a rule; and also from our standards as to the way side track ties are spaced.

Q. Now, of switch ties you have shown 9724 sets. Is that actual quantity?

A. Yes, sir; that is actual quantity, taken from our records.

Q. Is the same true of crossing ties?

A. Yes, sir.

Q. Will you state your basis of price for track ties?

A. We used the price of 82 cents. That represents an average of what we figure the ties would cost to replace at that time—1908.

Q. Does that figure cover all the charges? Just state what that price includes in addition to the original cost of the tie delivered on the right of way?

A. Well, to the price of the tie delivered on the right of way would be added the pealing, if such was necessary, any handling, and any transportation charges to deliver the tie to the point of work.

Q. And how about freight charges on ties that are brought from points off your line?

A. The freight charges on ties are figured at tariff rate.

Q. That is included in the 82 cents?

A. That is included in the 82 cents. I would say that we have a statement to be presented as an exhibit, showing what ties have cost us on various lines for a few years past.

Q. I had forgotten about that.

(Paper produced by witness.)

Mr. Holden: We offer in evidence, and ask that it be marked "Complainants' Exhibit 17 (Hogeland)" a statement entitled "Great Northern Railway—Cost of Track ties."

(Said paper was so marked.)

COMPLAINANT'S EXHIBIT 17 (HOGELAND).

GREAT NORTHERN RAILWAY.
COST OF TRACK TIES.
MILEAGE.

Built	Line	Main	Side	Number	Charges	Cost per Tie
1898	Cloquet to Boyleston	126.12	9.03	356,800	$242,714	68.0
	Deer River to Fosston					
1899	Hibbing to Virginia	18.78	3.98	60,090	28,009	46.6
1901	Brookston to Ellis	46.49	3.49	132,060	59,344	45.0
1902	Jennings to Boundary	50.98	6.08	150,480	49,589	32.9
	Marcus to Republic	69.38	6.40	200,100	74,868	37.4
	Kelly Lake to Nashwauk	10.64	.65	29,830	11,206	37.6
	Boundary to Swinton	43.38	6.28	131,100	60,686	46.3
	Laurier to Danville	16.50	2.58	50,160	18,057	36.0
1903	Souris to Westhope	16.41	1.33	46,830	44,473	95.0
	Granville to Mohall	46.97	2.99	132,000	119,045	90.2
1904	Columbia Falls to Rexford	69.18	10.41	210,140	114,627	54.6
	Thief River Falls to Greenbush	41.09	2.61	115,370	72,835	63.1
	Mohall to Sherwood	14.85	1.98	44,430	36,904	83.1
	Edmore to Munich	24.87	1.96	70,830	52,335	73.9
	Swinton to Fernie	9.82	1.48	29,830	18,489	62.0
	Grand Forks to Phoenix	29.37	7.50	97,340	38,536	39.6
1905	Towner Line	46.13	3.58	131,230	97,576	74.4
	York Line	34.68	2.44	98,000	66,597	68.0
	Westhope Extension	12.76	1.40	37,380	29,551	79.0
	Forbes Extension	13.36	1.56	39,390	30,030	76.3
	Munich Extension	20.53	2.62	61,120	45,078	73.8
	St. Johns Extension	3.88	.....	10,300	8,134	79.0
	Curlew to Midway	14.52	1.49	42,240	25,427	60.2
1906	Midway to Molson	28.89	3.20	84,740	38,695	45.7
	Boundary to Keremeos	18.20	2.27	54,120	28,899	53.4
	Thorne to Dunseith	7.61	.35	21,010	23,892	1.137
	Molson to Oroville	27.82	7.99	99,460	49,842	50.1
	Sioux City to Ashland	103.15	18.08	320,050	260,275	81.3
1907	Kelly Lake to Fermoy	23.40	2.98	74,300	48,175	64.9
	Aneta to Devils Lake	57.72	9.18	176,600	149,905	84.9
	Oroville to Boundary	20.64	1.09	57,370	30,422	53.0
	Crosby Line	89.16	6.51	252,570	217,817	86.2
	Portage la Prairie Line	77.01	6.57	220,650	171,190	77.6
	Brandon Line	69.45	7.22	202,410	179,612	88.7
	Morden Line	15.25	2.33	46,410	47,185	1.017
	1898–1907	1,318.99	149.61	3,886,680	$2,590,019	66.6
	1905–1907	684.26	80.86	2,029,350	$1,548,302	76.3
	1907	352.63	35.88	1,030,310	$ 844,306	82.0

Chief Engineer's Office, April 15th, 1909.

Q. Now, Mr. Hogeland, will you just explain what this exhibit shows?

A. It shows the cost of track ties bought for new lines, from 1898 to 1907, inclusive, covering a total of 1318.99 miles—

Q. Of main track?

A. Of main track—and 149.61 miles of side track. It covers the total number of ties of 3,886,680; the total charges for these ties being $2,590,019, or an average cost per tie of 66.6 cents. I have also separated it, showing the lines built during 1905 and 1907—that would cover three years—covering a mileage of main track of 684.26, side track 80.86, 2,029,350 ties, total charges $1,548,303, or an average cost per tie of 76.3 cents. Taking the year 1907 alone, during which was constructed 352.63 miles of main track and 35.88 miles of side track, the total number of ties used being 1,030,310, total charges $844,306, which gives an average cost per tie of 82 cents.

Q. What was your purpose in showing first the average price from 1898 to 1907, and then the average price from 1905 to 1907, and finally the price for 1907?

A. It was made to show that the price of ties has been gradually increasing, and while the average price for that ten year period has been 66.6, for the last year, 1907, it has been 82 cents.

Mr. Teal: The purpose of this is to show that the price of ties has been increasing? Is that the only purpose of this?

The Witness: That was one purpose, and I think is an answer to Mr. Holden's question whan he asked me why I separated it into those different items—those different periods. The purpose of the entire statement is to show what ties have cost us.

Mr. Teal: On the whole system?

The Witness: On the whole system; yes, sir.

Mr. Teal: And this statement purports to show that?

The Witness: Yes, sir.

Mr. Teal: And is fairly illustrative.

The Witness: I think so, yes, sir. I should add to Mr. Teal's question, I think, that it covers the lines built during that time.

Mr. Teal: That don't answer the question I asked you. It depends very much upon whether it shows the average cost of your ties. I was looking at this and I see it is all in the east. Is there any Washington work in there that amount to anything?

The Witness: Yes, sir.

Mr. Teal: How much of late years?

The Witness: Well, there is—

Mr. Teal: Where is your Washington work and Idaho work?

The Witness: Well, I was going to give you the Washington work.

Mr. Teal: I would like to have that given, so we will see how much is east and how much is west.

The Witness: Curlew to Midway is one item. Molson to Oroville 27.82. Oroville to Boundary, 20.64 miles. Those, I think, are the only Washington lines.

Mr. Teal: All those are under sixty cents—60.2. I beg your pardon. I just wanted to know if you considered that—

Mr. Holden: Well, I was just going to ask you some questions in relation to the location of those different items of work. Are there some other lines constructed west of Minnesota?

A. Oh, yes; a number of lines in North Dakota, Montana, British Columbia, as well as some in Washington.

Q. And among those lines that you were giving in answer to Mr. Teal's question are lines just immediately north of the international boundary, in Canada, are there not?

A. Yes, sir.

Mr. Walter: Will you point those out?

Mr. Teal: They show for themselves right in the figures. I can pick them out from the figures. I will pick them out later. I see the cost per tie.

Q. Referring to the cost for 1907, of 82 cents, it is already in this record, and was referred to in the testimony taken in Chicago on Friday and Saturday, that there was a recline in prices in the latter part of 1907—a decline in prices of lumber generally, which I take it would include all kinds of lumber, although I am not specifically informed right now as to whether the same decline came in ties as did in other forms of lumber—

Mr. Teal: Mr. Darling so testified.

Mr. Holden: I think that is a fact.

Q. Were the prices paid for ties in 1907 affected by that decline or not?

A. They were not, I think, the ties shown in this statement.

Q. Why not?

A. I think they were all purchased earlier in the year. If there was any decline then, in the latter part of the year I do not think it would show in this statement.

Mr. Teal: Pardon me, Mr. Hogeland. You said you were

making up this statement as of July 1, 1908. Why wasn't the tie price shown before that date?

The Witness: That, I think, will be brought out in the testimony.

Mr. Donnelly: Mr. Teal, he made the original statement. The detailed estimate, he said, was made out as of July 1, 1908. This is a statement of prices actually paid.

Mr. Teal: Yes. I won't interrupt any further.

Q. Is it a fact, or not, that in work of this kind, such as would be shown in the construction during the year 1907, that the early part of the year would see the contracts let and the prices agreed upon and contracted for, so that a break or change in prices later in the year would come after those arrangements had all been made?

A. Yes, sir; that is the practical working out of the thing.

Q. Turn to your exhibit 15. How do you arrive at your prices for switch ties? Is that $82.00 per set?

A. Yes, sir; $82 per set. That is made up, based on the average number of feet, board measure, in each set, to which is added handling and transportation charges; the average price per set being $60 for the lumber, $4.00 per set for handling, and $18 per set for transportation charges, making a total of $82 per set.

Q. And is that substantially true as to crossing ties?

A. Yes, sir; that is made on the same basis.

Q. Now passing to the item of rails: How do you arrive at the number of tons in main and side track rails?

A. The tonnage is computed from the mileage of the different parts of the system and the weight of the rail, in each piece or part of line, and main track and side track, so as to arrive at the actual tonnage as it existed at that date.

Q. Your records show the different weight of rails in the different parts of the line?

A. Yes, sir.

Q. And, so far as the number of tons is concerned, this is a matter of actual computation as a matter of record?

A. A matter of calculation, yes, sir.

Q. And the price, Mr. Hogeland?

A. The price is taken at $39.75 per ton, and that is based on an average price of $30.47 at St. Paul, or the head of the Lakes, 28 cents per ton for inspection and handling, and $9 per ton freight charges, making a total of $39.75 per ton.

Q. What is the price at St. Paul or the head of the Lakes?

A. $30.47 per ton.

Q. That is based, is it not, upon the price of the rails at Chicago, plus the freight to St. Paul?

A. Not necessarily at Chicago. It is wherever the rails would be purchased; and it is based on our purchases of rails during the year 1908.

Q. How many tons?

A. 60,000 tons.

Q. And that was the actual average price per ton paid during 1908 for that quantity?

A. Yes, sir, as laid down at either the head of the lakes or St. Paul.

Q. Now, to that actual average price you have added 28 cents for inspection and handling?

A. Yes, sir.

Q. What does that mean?

A. It means the inspection of the rails at the mill as well as when the rail is received at either St. Paul or the head of the lakes, and the handling from dock to cars, or transferring from car to car previous to the rail being shipped west.

Q. Is that a proper and reasonable charge?

A. It is, I think.

Q. That makes a total of $30.75 spent on the rails up to the time they are ready to be shipped out on the line from St. Paul to the head of the lakes?

A. Yes, sir; on the cars ready to be shipped west.

Q. Now in the purchase of your 60,000 tons of rails during 1908, did you encounter such a price as 28 cents per ton for inspection and handling? Is that based upon your actual experience?

A. It is based on experience extending over a period of years; yes, sir. 28 cents per ton is a reasonable allowance for that.

Q. What was the item for freight charges?

A. $9 per ton.

Q. Will you explain how you arrived at that?

A. We would carry the rail out to a point in Western North Dakota, which would constitute about the center of haul or center of gravity, if you might call it such, of the system.

Q. That would be an average haul?

A. It would represent an average haul for all of the rail.

Q. And the rate is figured at the tariff rate?

A. Yes, sir.

Q. Have you got the actual mileage?

Mr. Teal: What is the mileage you figure in arriving at $9.00?

The Witness: I didn't take it on that basis. We took it to a point that figured about the center of gravity of the system, and that brought it somewhere in the Western part of North Dakota,—I think a little west of Minot.

Mr. Teal: Can you give any idea of the mileage?

The Witness: Yes, I think that would be a point about 650 miles from St. Paul, something like that.

Q. I wish you would explain your conception of the idea of the reason for applying tariff rates on an item of that kind?

A. I think it is necessary to apply tariff rates, because in the reproduction of the Great Northern System the materials would be hauled pretty largely by other companies. That would be one reason. A further reason would be that where the material is hauled over your own line it would necessarily be done before the railroad is completed, and the transportation conditions would be poor. Your railroad would be largely skeleton track; your train loads would necessarily have to be small, and generally your haul would be empty in one direction—your trains would be empty in one direction. I therefore consider that the tariff rate, so far as a railroad under construction is concerned, would represent very closely the cost of doing the work.

Q. You mean the actual cost of movement, regardless of any return for the use of the property?

A. That is my idea; yes, sir.

Q. Now, in the matter of transporting material to the front, over what you call a skeleton track: Why is that more expensive than moving material over a finished railroad?

A. The movement is necessarily slow, and your train load is necessarily light. The power has to be lighter than you would use if your railroad was fully completed, and all the conditions tend to make the cost of transportation higher.

Q. Now, with your half completed road, what have you to say as to the different facilities along such a line in the way of water tanks and repair shops and places for furnishing supplies for the movement of trains, or the repair? What condition are those things in?

A. Necessarily those facilties would be very incomplete.

Q. Does a condition of that kind add to the expense of moving freight or trains and engines over such a line?

A. It does.

Q. If I understand it, then, if a tariff rate is presumed to be a reasonable rate on a fully matured and completed line, with a volume of traffic moving over it, your idea is that it is not an unfair basis to figure the cost of moving material to the front over a half finished skeleton line such as you refer to?

A. No: I consider it as fair a measure as can probably be arrived at.

Q. Now, you say a large amount of such material as rails would move to the front over other lines. What do you know as an actual fact about that in the building of lines? Is that an established method of doing such a thing among railroad men?

A. Yes, it is. That is illustrated by the recent building of the Chicago, Milwaukee & St. Paul. A very large portion of their material, especiadlly rails, was transported over other roads. It is true of the original construction of some portions of the Great Northern—the material was taken out over other roads. A reason for doing that would be to hasten the completion, which could be done more rapidly, the work could be carried out more rapidly by working at a number of points, rather than to push out always from one end.

Q. The next item is Frogs and Switches. You show a certain number of sets, itemizing and naming the different articles embraced in a set, and the average price, including freight charges, of $95. How was that arrived at?

A. That is arrived at by taking the details of ordinary turnouts and adding the price of the different parts, consisting of frogs, switch points, guide rails, switch stand and so forth, and to that adding freight charges at the tariff rate, producing an average price of $95 per set.

Q. That is also true of crossing frogs?

A. Yes, sir; that is true of crossing frogs.

Q. Those are steel and iron items, are they not?

A. Yes, sir.

Q. And how is your price for those arrived at?

A. That is based on the prices prevailing in 1908.

Q. You mean prices that your company actually paid during that period for items of this kind?

A. Yes, sir.

Q. Is that also true of "track fastenings and other material"—the next item?

A. Yes, sir; that is true of "Track fastenings and other material."

Q. How are the quantities there shown?

A. The angle bars, bolts and nuts, are taken from our records, as to the kind of such articles that go with the different weights of rails and are figured on the average length of rail. The spikes are based on the number of ties. Tie plates are taken from an actual record of what has been put in the system, the track not being always fully tie-plated. And the same is true of rail-braces.

Q. And your prices?

A. The prices are based on the prices paid for the same class of material during 1908, to which is added transportation charges.

Q. "Ballast" is the next item, and you have divided the mileage of the system into three divisions—3591 miles having a full ballast lift of 3000 cubic yards to the mile; 1942 miles of main track having a partial ballast lift of 2250 cubic yards to the mile; and 1421 miles of side track having a partial ballast lift of 1500 cubic yards to the mile. Now how do you arrive at that division of the mileage?

A. That is made from our records of the way the track is ballasted, as of that date, together with information furnished by our resident engineers as to the condition of ballast in different parts of the system.

Q. Well, to what extent? Then you say that the total there of 17,274,000 cubic yards is substantially accurate, as showing the actual ballast condition of the system?

A. My opinion is that it represents, as closely as we can represent, the conditions as to the amount of ballast under the tracks, as it exists, as it is possible to arrive at. I desire to say that there has been more ballast than that placed in the railroad, but that a portion of gravel which is put into the roadbed after a course of time settles into the roadbed and can hardly be called ballast. So that if we should take our records as to the amount of ballast which has been hauled out and placed in track from time to time it would make a considerably larger item than this.

Q. You mean what actual records you have of actual ballast that has been moved would be more than that?

A. Yes, sir.

But this quantity only covers that which, to-day, may properly be termed ballast, and excludes all ballast that has gone down below what would now be called ballast?

A. It is made up with that in view. It is a difficult thing

to arrive at, just where the separation would be; but it represents, as nearly as we can come at it, what should properly be called ballast today- in the railroad.

Q. And your price is shown at 62 cents a cubic yard?

A. Yes, sir; that is based on my judgment as to what it would cost to reproduce that ballast in place, as it exists.

Q. That price includes the different charges?

A. It includes the cost of loading, unloading, putting under track, and dressing, maintenance and repairs of steam shovels, train service hauling, repairs of equipment, transportation of men, tools and supplies.

Q. There is no charge for rent of equipment here?

A. No, sir.

Q. After you made this estimate on ballast, did you make an examination of your recent records, to determine what the average price that the Company had actually paid during recent years for ballasting was?

A. Yes, sir; we did.

(Paper marked "Complainants' Exhibit 18 (Hogeland)").

ACTUAL COST OF B

Date	Line	Mile-age	Cu. Yds. Ballast	Train S
				Charges
1901	Brookston to Ellis, Minn	46.49	143,100	19,156.
1902	Jennings to Rexford, Mont	42.26	126,780	24,165.
	Marcus to Republic, Wash	69.38	118,404	22,929.
	Kelly Lake to Nashwauk, Minn	10.64	21,280	3,415.
	Boundary to Swinton, B. C	43.38	86,760	22,377.
	Laurier to Danville, B. C	16.50	32,000	6,788.
1904	Columbia Falls to Rexford	69.18	213,931	51,155.
	Swinton to Fernie, B. C	9.82	33,050	5,852.
1905	Curlew to Midway, Wash	14.52	42,600	5,729.
1906	Molson to Oroville, Wash	27.82	78,610	10,183.
	Midway to Molson, B. C	28.89	87,079	13,225.
	Sioux City to Ashland, Neb	103.15	231,353	29,659.
1907	Aneta to Devils Lake, N. D	57.72	185,699	27,259.
1908	Armington to Laurel, Mont	194.67	559,419	84,738.
		734.42	1,960,065	326,636.

In this statement the Charges for "Rental of Equipment" as shown in
Under "Train Service" is included all train service for loading, hauling
Under "Labor, Tools and Supplies" is included all labor loading, unloadi
Under "Pit Tracks" and "Stripping Pits" are included such charges
labor; cannot be separated.

Office Chief Engineer,
St. Paul, March 15, 1909.

COMPLAINANT'S EXHIBIT 18 (HOGELAND).

GREAT NORTHERN RAILWAY COMPANY.

ACTUAL COST OF BALLASTING LINES CONSTRUCTED 1901–1908, AS SHOWN BY CONSTRUCTIO

;c	Cu. Yds. Ballast	Train Service		Labor, Tools and Supplies		Repairs of Equipment		Pit Track	
		Charges	Per Yd.	Charges	Per Yd.	Charges	Per Yd.	Charges	
9	143,100	19,156.29	13.4	75,268.38	52.6	16,339.24	11.4	.....	.
6	126,780	24,165.85	19.1	57,838.96	45.6	4,987.13	3.9	.....	.
8	118,404	22,929.10	19.4	38,906.84	32.8	6,163.49	5.2	.....	.
4	21,280	3,415.72	16.0	7,178.25	33.7	483.70	2.3	.....	.
8	86,760	22,377.29	25.8	34,161.47	39.3	691.15	0.8	.....	.
0	32,000	6,788.45	21.2	10,253.24	32.0	2,000.14	6.3	.....	.
8	213,931	51,155.61	23.9	58,222.69	27.2	3,119.72	1.5	3,297.55	
2	33,050	5,852.54	18.0	9,990.86	30.1	1,231.29	3.6	154.82	
2	42,600	5,729.50	13.4	10,302.39	24.2	1,751.44	4.1	74.96	
2	78,610	10,183.12	13.0	33,166.42	42.2	746.42	0.9	.....	.
9	87,079	13,225.66	15.3	30,112.33	34.5	2,749.57	3.1	341.73	
5	231,353	29,659.12	12.8	77,499.78	33.5	10,652.47	4.6	10,670.47	
2	185,699	27,259.34	14.6	61,783.47	33.0	1,090.60	0.5	1,714.63	
7	559,419	84,738.97	15.2	234,820.54	41.9	2,023.15	0.4	12,309.18	
2	1,960,065	326,636.56	16.6	739,505.62	37.7	54,029.51	2.8	28,563.34	

Equipment" as shown in the Construction Books have been cut out. Instead thereof, it wou
rvice for loading, hauling and unloading ballast.
l all labor loading, unloading, placing ballast under ties, tamping, dressing and lining track, als
e included such charges as appear in the Construction Books so designated: on many lines the

Tracks		Stripping Pits		Transportation		Total	
	Per Yd.	Charges	Per Yd.	Charges	Per Yd.	Charges	Per Yd.
...	.....	.....	.....	909.09	0.6	111,673.00	78.0
...	.....	.....	.....	11,378.34	9.2	98,370.28	77.8
...	.....	.....	.....	8,334.33	7.1	76,333.76	64.5
...	.....	.....	.....	.....	.....	11,077.67	52.0
...	.....	.....	.....	4,773.79	5.5	62,003.70	71.4
...	.....	.....	.....	218.07	0.7	19,259.90	60.2
55	1.5	.....	.....	32,097.82	15.0	147,893.39	69.1
82	0.4	.....	.....	469.54	1.4	17,699.05	53.5
06	0.2	.....	.....	1,909.77	4.4	19,768.06	46.3
...	.....	.....	.....	5,250.17	6.7	49,346.13	62.8
73	0.4	.....	.....	7,532.81	8.6	53,962.10	61.9
47	4.6	2,994.64	1.3	3,976.18	1.7	135,452.66	58.5
53	0.9	2,888.80	1.5	2,054.72	1.1	96,791.56	51.6
18	2.2	23,171.00	4.1	43,362.90	7.8	400,425.74	71.6
34	1.5	29,054.44	1.5	122,267.53	6.2	1,300,057.00	66.3

would be proper to add an item for "Depreciation of Equipment."

, also steam shovel supplies and track tools.
the cost of putting in pit tracks and stripping has been charged directly to

Q. I direct your attention to an exhibit which has been marked "Complainants' Exhibit 18 (Hogeland)" and which is entitled "Actual cost of ballasting—Lines constructed 1901-1908, as shown by construction books." Will you briefly explain what that exhibit shows?

A. The first column in this Exhibit 18 shows the date the work was carried out. The second column shows the particular line. The third column shows the mileage. The fourth column shows the cubic yards of ballast. The fifth column shows the charges to train service. The sixth column shows the price per yard for train service. The seventh column shows the charges to labor, tools and supplies. The eighth column shows the price per yard for such labor, tools, and supplies. The ninth column shows the charges to repairs of equipment. The tenth column shows the price per yard for such repairs of equipment. The eleventh column shows the charges to pit tracks. The twelfth column shows the price per yard for such charges to pit tracks. The thirteen column shows the charges to stripping of pits. The fourteenth column shows the price per yard for stripping pits. The fifteenth column shows the charges to transportation. The sixteenth column shows the price per yard for such charges of transportation. The seventeenth column shows the total charges. The eighteenth column shows the price per yard of such total charges—amounting to 734.42 miles—a total of 1,960,065 cubic yards of ballast, and the total charges $1,300,057, or an average price per yard of 66.3 cents.

Q. Now, the exhibit shows for itself what is meant by train service, labor, tools, supplies, pit tracks and the other divisions into which the total charges have been put, does it not?

A. Yes, sir; it does. You will note that for some of the lines there are no charges to pit tracks and stripping of pits. I would say that for some of the lines we were not able to separate them—that is, they were placed under labor charges—but where we could separate them we have done so and shown them under those columns.

Q. You mean they are probably contained in the column entitled "Labor, Tools and Supplies"?

A. Yes; where they exist. For some of the gravel pits it is not necessary to do any stripping; therefore there would be no charge to stripping.

Mr. Walter: Is that taking the dirt off the top of the ballast?

The Witness: Off the top of the gravel, yes, or whatever material is used for ballast.

Q. What is the difference between train service and transportation?

A. The train service as used in this statement includes all train service for loading, hauling and unloading the ballast. That is, it is the train service in spotting cars in the pit, hauling them wherever the gravel is to be distributed, handling the trains while gravel is being unloaded, and getting the trains back to the pit again. Transportation covers the sending of the men, the supplies, camp outfit or anything of that kind, which would be used by the men on the work on other words, freight charges or passenger charges.

Q. And all kinds of items that, according to accounting methods, would be chargeable to the transportation of men and material to the place and from the place where the ballast work is going on?

A. Yes, sir; whatever transportation charges of that nature are properly chargeable to the ballasting.

Q. What have you to say on the subject of transporting men and material "to the front" as it is expressed? What has been the experience in construction work, on the Great Northern Road for instance, about the sending of men out to the work and bringing them back?

A. It has been necessary to send a great many more men than anyone would imagine would have to be sent to carry out a piece of work.

Q. Why is that, and why has it been so?

A. Well, pretty largely because the class of labor that it is possible to secure is a very floating kind. They do not want to remain in one place any great length of time. It is necessary to keep sending men to replenish the laborers all the time.

Q. From your knowledge has that been peculiar to the Great Northern Road, or has it been the common experience of Western railroads?

A. I think it has been the common experience of practically all of the Northwestern roads, at least. I could probably illustrate that by—

Q. I would like to have you illustrate it, if you can, so we will clearly understand.

A. The number of men that were sent to the construction of the Billings and Northern Line.

Q. Just where is that line?

A. That is between Billings and Great Falls, in Montana. It was under construction during 1906, 1907 and 1908.

Q. About how many miles?

A. 225 miles, the entire length of the line. Now, during 1906 the average men employed per month was 1292. We actually shipped during 1906, 8587 men to that work—nearly seven times the number of men who were the average number engaged at one time. During 1907 the average number employed per month was 2083. We actually shipped there 20281 men—almost ten times the number of them employed on the average at one time. During 1908—and during that year the track laying and ballasting was in progress—hardly any other work going on except the buildings and bridges—the average number of men employed was 528, and we actually shipped there 14,185 men.

Mr. Holden: We offer in evidence "complainants' Exhibit 18 (Hogeland)".

Mr. Teal: Isn't it already in?

Mr. Holden: I haven't formally offered it; I have only referred to it.

The Master: It will be received.

Q. The next item is "Track laying and surfacing," Mr. Hogeland, and you have arrived at the cost price of $900 per mile for the different items shown in the exhibit which enter into the laying and surfacing of track. How do you arrive at $900?

A. That is based on my judgment and supported by a statement which we prepared showing what it has actually cost to lay a surface track on a considerable mileage.

(Paper marked "Complainants' Exhibit 19 (Hogeland)".

COMPLAINANT'S EXHIBIT 19 (HOGELAND).

GREAT NORTHERN RAILWAY COMPANY.

ACTUAL COST OF TRACKLAYING AND SURFACING LINES CONSTRUCTED 1898 TO 1908 AS SHOWN BY CONSTRUCTION BOOKS.

Built	Line	Miles Laid	Train Service		Labor, Handling Material and Laying Track		Surfacing Track		Repairs of Equipment		Transportation		Total Charges	Per Mile
			Charges	Per Mile	Charges	Per Mile	Charges	Per Mile	Charges	Per Mile	Charges	Per Mile		
1898	Cloquet to Boyleston Deer River to Fosston	134.99	$ 18,153.89	$135	$ 57,081.55	$423	$ 22,551.66	$167	$ 2,252.44	$17	$ 1,154.58	$ 9	$ 101,194.12	$751
1899	Hibbing to Virginia	22.76	1,895.17	83	12,946.29	569	22,219.64	976	.....	.....	241.20	10	37,302.10	1,638
1901	Brookston to Ellis	49.98	7,290.09	146	21,632.85	433	7,875.49	157	2,137.91	43	181.81	4	39,118.15	783
1902	Jennings to Rexford	47.26	7,583.57	160	23,808.86	505	.....	.....	.....	.....	2,256.51	48	33,648.94	713
	Marcus to Republic	75.74	20,264.34	268	40,073.10	529	.....	.....	2,453.14	32	1,666.87	22	64,457.45	851
	Kelly Lake to Nashwauk	11.29	1,387.13	123	3,280.98	291	2,937.81	260	.....	.....	.....	.....	7,605.92	674
	Boundary to Swinton	49.66	11,019.17	222	23,549.13	474	.....	.....	463.16	9	933.62	18	35,965.08	723
	Laurier to Danville	19.08	2,734.78	143	9,443.06	496	2,711.37	142	221.95	11	43.61	2	15,154.77	794
1903	Souris to Westhope	17.74	1,026.04	58	10,021.85	565	7,200.08	406	139.88	8	212.96	12	18,600.81	1,049
	Granville to Mohall	49.96	9,149.40	183	15,600.14	313	11,064.14	221	1,181.04	23	333.65	7	37,328.37	747
1904	Columbia Falls to Rexford	84.96	21,330.28	251	50,207.32	591	.....	.....	36.50	.....	5,532.45	55	77,106.55	897
	Thief River Falls to Greenbush	43.70	9,083.05	207	12,930.16	296	12,203.62	280	11.88	.....	201.17	5	34,429.88	788
	Mohall to Sherwood	16.83	3,010.81	179	6,661.50	396	5,287.10	315	387.04	23	194.41	11	15,540.86	924
	Edmore to Munich	26.83	4,587.48	171	9,443.54	352	10,912.38	407	582.16	22	289.07	11	25,815.13	963
	Swinton to Fernie	11.30	1,941.98	171	7,959.60	705	.....	.....	.....	.....	93.91	9	9,995.49	885
1905	Towner Line	49.71	6,338.40	127	12,890.88	260	10,988.91	221	679.68	14	250.08	5	31,147.95	627
	York Line	37.12	5,804.60	156	10,194.93	275	9,673.52	261	712.96	19	238.51	6	26,624.52	717
	Westhope Extension	14.16	1,899.57	134	4,282.78	302	4,070.73	288	182.88	13	109.09	8	10,545.05	745
	Forbes Extension	14.92	1,442.85	97	6,260.71	419	5,952.37	399	.....	.....	106.66	7	13,762.59	922
	Munich Extension	23.15	3,650.21	157	8,961.76	387	7,119.11	308	465.09	20	171.27	7	20,367.44	879
	Curlew to Midway	16.01	3,906.05	243	8,903.03	557	.....	.....	74.30	5	371.87	24	13,255.25	830
1906	Midway to Molson	32.09	8,999.95	279	21,730.65	675	4,827.81	154	784.44	24	1,506.56	47	37,849.41	1,179
	Sioux City to Ashland	121.23	16,081.64	133	58,104.41	479	2,607.92	22	293.79	2	2,659.01	22	79,746.77	713
1907	Kelly Lake to Fermoy	26.38	5,907.74	224	14,093.18	533	8,058.43	305	225.16	9	309.43	12	28,593.94	1,083
	Aneta to Devil's Lake	66.90	17,941.08	268	40,020.06	598	17,643.93	264	157.33	2	363.89	5	76,126.29	1,137
	Berthold to Crosby	95.67	25,160.45	263	44,327.13	464	28,108.52	293	184.99	2	867.88	9	98,648.93	1,115
	Portage la Prairie Line	83.58	20,827.61	250	36,265.24	433	51,752.51	619	270.73	3	302.05	4	109,418.14	1,309
	Brandon Line	76.67	14,241.37	184	29,511.23	389	49,483.53	643	716.32	9	644.10	8	94,597.05	1,233
	Morden Line	17.58	4,766.49	271	8,985.66	511	15,143.64	861	.....	.....	24.24	1	28,920.03	1,644
1908	Armington to Laurel	228.62	65,646.43	287	138,901.12	608	.....	.....	3,077.78	13	8,672.58	38	216,297.91	946
	Totals	1,565.87	$323,071.42	206	$748,072.70	478	$320,394.72	205	$17,693.05	11	$29,933.04	19	$1,439,164.93	$919
													Less Estimated Cost of laying 940 Switches, at $25	23,500.00	15
														$1,415,664.93	$904

In this Statement the Charges for "Rental of Equipment" as shown in the Construction Books have been cut out. Instead thereof, it would be proper to add an item for "Depreciation of Equipment."

Under "Train Service" is included all Train Service in Material Yard, hauling Track Materials to the front, handling tracklaying machine, and moving boarding outfits and men.

Under "Labor, Handling Material and Laying Track," is included all labor in Material Yard, handling material, curving rail, laying tracks, putting in switches, placing tie plates, also tracklaying Tools and Supplies.

Under "Surfacing Track" is included Labor and Tools surfacing track, to put it in condition for passage of construction trains, and keep it in condition until ballasting is done.

Under "Repairs of Equipment" is shown charges to that item for Equipment actually in use tracklaying and surfacing.

Under "Transportation" is shown transportation charges for men engaged on the work tracklaying and surfacing.

Q. I direct your attention to an exhibit which has been marked "Complainants' Exhibit 19 (Hogeland), which I offer in evidence, and ask you if you will kindly explain, as briefly as you can just what it shows?

A. This Exhibit 19 shows the actual cost of track laying and surfacing lines constructed from 1898 to 1908, as shown by construction books. The first column shows the date the line was built. The second column shows the name of the line. The third column shows the mileage. The fourth column shows the charges to train service. The fifth column shows the price per mile to cover such charges to train service. The sixth column shows the charges to labor, handling material and laying track. The seventh column shows the cost per mile for such charges. The eighth column shows the charges to surfacing track. The ninth column shows the cost per mile for such charges. The tenth column shows the charges to repairs of equipment. The eleventh column shows the cost per mile for such charges. The twelfth column shows the charges to transportation. The thirteenth column shows the cost per mile for such charges. The fourteenth column shows the total charges to track laying and surfacing. The fifteenth column shows the cost per mile for such total charges. The summary showing 1565.87 miles; total charges to train service $323,071.42; making an average per mile of $206. Charges to labor, handling material and laying track $748,072.70, making a cost per mile of $478. Total charges to surfacing tracks $320,394.72, making a cost per mile of $205. Charges to repairs of equipment $17,693.05, making a cost per mile of $11. Transportation charges, $29,933.04, making a cost per mile of $19. Total charges, $1,439,164.93, making a total cost per mile of $919. Now, this included the laying of switches, amounting to 940. Deducting these at the price which we have used in our statement of the cost of reproduction—$25 each, amounting to $23,500—reduces the total charges to track laying and surfacing to $1,415,664.93, or an average cost per mile of $904. Now in this statement the charges for rental of equipment shown in the construction books have been cut out.

Q. What is meant by rental equipment?

A. It is a charge which is made against any piece of line or railroad for the use of equipment.

Q. Now I ought to have asked you that in reference to ballast but I will ask it now with reference to both these items

of work—ballasting and track laying and surfacing. How is that work ordinarily done? Is it done by contract or by the Company?

A. It is ordinarily done by contract.

Q. In the rental of equipment you would mean to cover such cases where the company equipment was used?

A. Yes, sir; so as to arrive at a charge to be made against that line for the use of that equipment.

Q. Something in the nature of a return on the value of the equipment used for that purpose. No such charge has been made?

A. It did appear in the construction books, but we cut it out for the reason that it might be considered a duplication when we come to our interest charges on equipment.

Q. That is what I wanted to make clear.

A. It is fair to charge for this equipment, but it appeared to me that if we put an interest charge in for our equipment, that we were not justified in also putting in a rental charge.

Q. Now, you show on the ballast Exhibit, which is Hogeland 18 and also on this Exhibit 19, a statement in reference to depreciation of equipment. Has there been any charge made for the depreciation of equipment used for either of these purposes?

A. No, sir; I haven't put any charge in. I think such a charge would be justified.

Q. But that has not been shown?

A. I have not shown it, no.

Q. Now what is meant by surfacing? I simply want to have you differentiate between surfacing the track and ballasting.

A. It is work which is done on track in the way of either casting in material from the side or putting in material which may be hauled from a sand pit—something of that nature,—to keep the track in reasonable condition to get over it with your construction trains. As track is first laid it is very rough and hard to haul over with any kind of a train. It is necessary to do some little work on it in the way of surfacing to make it so you can get over it with construction trains.

Q. That is the piling up of the natural material that is there or at hand, between the ties—between the rails largely—so as to hold the track in place for construction movement?

A. Yes, sir. And as I said before, either by casting in a little material from the shoulder of the embankment or haul-

ing in a little material preparatory to your ballasting, so as to keep it in shape until the ballasting can be done.

Mr. Walter: Then is that taken out before the ballast is put in?

The Witness: It depends on the kind of material. If it is material that could be mixed well with the ballast—pretty good coarse sand—it is generally left in. On the other hand, if it is more in the nature of mud, why, we generally have to shovel it out again.

Q. Then deducting the estimated cost of laying switches, you find, over a period of ten years, that the actual cost of track laying and surfacing has been $904 a mile?

A. Yes, sir.

Q. Now the $25 cost for laying and surfacing switches and the $45 cost for crossings: How were those items arrived at?

A. That is practically the actual cost of doing such work.

Q. Based on your experience in recent years?

A. Yes, sir.

Q. Roadway tools, $172,800?

A. That is based on the number of sets of sectionmen's and bridge carpenters' tools on hand as of that date.

Q. And the price?

A. And the average price per set.

Q. "Fencing right of way." You have a certain number of miles of right of way fenced?

A. Yes, sir; that is, the mileage is taken from our records on that subject, and to which we have applied the average cost per mile of right of way fence.

Q. You mean your current cost at or about the time that this exhibit purports to have been made?

A. Yes, sir; our right of way fences are not all of the same design, and it is made to represent an average of the cost of the different designs.

Q. And is that also true of the different sets of cattle guards?

A. Yes, sir; that is true of the cattle guards.

Q. Both as to quantity and as to price?

A. Yes, sir.

Q. "Crossings and signs": is what you say also true as to those items?

A. Yes, sir; that is based on the average cost of the plank, spikes and labor in ordinary crossings; and the price is applied to the number that existed in the railroad.

Q. And you show certain steel overhead bridges, $1,474,696, and some wooden overhead bridges of a lesser amount.

A. Yes, sir. Those were put in and represent the cost of reproduction of such overhead braces, either of steel or wood.

Q. And what you have said about other bridges—the basis of price and the quantity,—would apply to these?

A. Yes, sir; would apply to overhead bridges.

Q. "Interlocking and other signal apparatus." The quantities there are actual, are they, from your records?

A. Yes, sir; those are taken from our records of what existed in the railroad.

Q. And the prices?

A. The prices are based on what it would cost to reproduce them during the year 1908. The same is true of block and other signal apparatus.

Q. "Telegraph and Telephone lines." That has been worked out in substantially the same way. The exhibit shows as furnished by the Superintendent of Telegraph—(Addressing Mr. Teal)—Mr. Teal, would you desire us to call the Superintendent of Telegraph?

Mr. Teal: No.

Q. Your understanding, Mr. Hogeland is that that has been based on actual computation of quantities and going prices during the year 1908?

A. Yes, sir; that is my understanding.

Mr. Teal: There is only one question I want to ask Mr. Hogeland there. Is this line used commercially?

The Witness: The same pole line would be; not always the same wire line.

Mr. Holden: If you desire, we can file a segregation. I think there are certain commercial lines on portions of the wires. I don't suppose it would make a difference of 1/10 of one per cent. on the ultimate figures. I am perfectly willing to concede the fact that there might be a reduction upon a close segregation of the commercial wires that the Western Union Telegraph Company may own and the balance owned by the railway company, but I think it classes itself among such small items that probably it would not disturb the total figures in the slightest degree.

Mr. Walter: Did the Western Union put up any poles?

Mr. Holden: My understanding is that in the original contracts there is a division of the cost; but after the line is once constructed I think it becomes the railroad's line,

subject to the right of the Western Union, under its contract, to make certain use of it commercially; but of course, we all know that those poles are never taken down. There is nothing in the nature of a removal value to them.

Q. Now, "Station buildings and fixtures" are shown on pages 14, 15 and 16, with a summary of all of them on page 16. In order to hasten a little bit—you have taken all of the brick and stone passenger depots, showing them on pages 14 and 15. Those are actually as shown by the different station names opposite the amounts, are they?

A. Yes, sir; they are for each one what we estimate would cost to reproduce them as of 1908.

Q. And has the estimate been made upon plans and specifications on file in the offices of the Company?

A. The estimate is based on the actual cost of those buildings, together with the plans of the buildings there on file.

Q. You mean the actual original cost?

A. Yes, sir.

Q. Now, on frame passenger depots you show a gross sum of $1,588,400. How do you arrive at that?

A. That is arrived at by taking the numbers of the different classes and applying a price to each class that would represent the cost of reproduction during 1908. We did not take each individual depot. We separated them into classes.

Mr. Teal: Your depots are built in classes, aren't they? different types of depots.

The Witness: Yes, different types. And then applied the price to each depot of a certain class.

Q. And those prices are standard along the line?

A. Yes, sir.

Q. "Freight depots, brick and stone": You appear to have selected out those that are individual to themselves, and have those been computed substantially the same way that the brick and stone passenger buildings were?

A. Yes, sir; on the same basis.

Q. And frame freight sheds and loading platforms: Were those computed on substantially the same basis as frame passenger depots?

A. Yes, sir.

Q. The summary shows a collection of the different individual items into one group?

A. It does.

Q. "General office building and fixtures": That is the

building at St. Paul. Was the present cost of reproducing that figured on the plans and specifications on hand?

A. Yes, sir; together with what the building originally cost and the fixtures that are in the building. It is based on that.

Mr. Teal: Pardon me. Is this more than it originally cost?

The Witness: Yes, sir; more than it originally cost.

Mr. Walter: And when was it built?

The Witness: Built two different times. Two additional stories were put on. The original building was put up, I think, in 1890; and some eight or nine years ago two additional stories were put on.

Q. You have taken the plans and specifications and estimated what it would cost at the current prices in 1908, to reproduce that building?

A. Yes, sir.

Q. And the land value is not included in the $643,500, shown in your item?

A. No, sir.

Q. Now, "Shops, engine houses and turn tables": You have taken individual plants of that kind at different points on the line. Will you state briefly how those have been computed.

A. The different points selected are the points where we have shop buildings in connection without division terminals, and for each point we have taken our ground plans and the building plans together, with the original cost of the various buildings and arrived at the cost of reproduction of the buildings at each of those points, covering shops, engine houses and turn tables.

Q. Those specified shops, &c., do not include smaller structures, which are estimated below on page 17?

A. No, sir.

Q. Now, briefly, as to that table, how did you arrive at those prices? By classifying the different character of the structures?

A. Yes, sir; by grouping them according to the same class of structures and applying a price to each one in that class. To engine houses we have applied a price per stall, for the brick buildings, also a price per stall for the frame buildings.

Q. In structures of this kind, and, in fact, generally speaking, have you shown on your exhibit the cost of reproducing any structure that is not in present use? For instance, you

have from time to time, as the history of the road has gone on, to discard a turn table as too small, have you not?

A. Oh, yes, sir. We have changed a very large number of turn tables. This, so far as turn tables are concerned, only covers what are in use at the present time.

Q. Has that been also true of other kinds of structures—that you have had to discard them because they were obsolete and because larger ones were needed or things of that kind?

A. Yes; it applies quite largely to engine houses, where it has been necessary to make them larger to accommodate the present power.

Q. Have you figured in it, in any way, any cost of reproducing any structure that is not in present use?

A. We have not figured in it any building that does not exist at present.

Mr. Teal: Won't you please answer the question, Mr. Hogeland?

Q. That is what I wanted to get at.

A. I had in mind one particular building—that is, the Hamline depot—that is not in use. Outside of that I don't know any.

Q. That is what I had in mind. The Hamline depot is a station between St. Paul and Minneapolis, which, with the coming of the electric service here, I think, has lost its trade, and has been closed for quite a while.

A. It has been closed.

Q. And that is shown, on page 14 of your exhibit, as $3500?

A. Yes.

Q. Outside of the Hamline depot, have you in mind any structure shown in these figures that is not in current use for the operation of the railroad?

A. No, sir; I haven't in mind any building.

Q. "Shop machinery and tools" is on page 18—water stations, fuel stations and grain elevators. Will you briefly explain the basis on which those different items are computed?

A. The machinery and tools in repair shops, as well as the machinery and tools in engine houses, has been made up to show the tools that are actually in existence, and covers the cost of setting them up, as well as freight charges, to the point where they are located. Water stations include all of the appurtenances that go with a water station, including

tanks, pump-houses, pumps, engines, wind-mills, stand-pipes, wells, reservoirs, pipe lines—everything that goes to form part of a water station for supplying locomotives with water.

Q. Are those water stations actually in use in the operation of the road?

A. Yes, sir; all of them are in use.

Q. Proceed.

A. The same is true of the fuel stations, made to show the number and the cost of reproduction of each. The same is true of the grain elevators. It shows where they are located and the cost of reproduction of each.

Q. Now the figures for those four grain elevators are based upon your plans and specifications on file, are they?

A. Yes, sir; they are.

Q. And by applying going prices for structures of that kind during 1908?

A. Yes, sir.

Q. And is that also true of the storage warehouses shown on page 19?

A. Yes, sir; it is. The statement shows where they are located, and the prices show what it would cost to reproduce them as of 1908.

Q. "Dock and Wharf Property."

A. The same is true of that item.

Q. And that is true also, is it, of "Gas producing plants"?

A. It is.

Q. "Miscellaneous structures," on page 20.

A. That includes buildings as listed and not covered in any other part of the statement, and is made to cover buildings that actually exist and the cost of reproducing them as of 1908.

Q. Now, you see there, "Miscellaneous small buildings"—that is a gathering together of actual quantities, is it?

A. Yes, sir.

Q. From records?

A. Yes, sir.

Q. Have you anything further to say on that?

A. No; I don't know of anything further to say on that.

Q. Page 21 contains "Contingencies." Now, will you explain the basis upon which you have computed contingencies in this exhibit?

A. I have computed contingencies in the items as shown on page 21 as grading, tunnels, bridges, trestles and culverts, track laying and surfacing, fencing right of way, crossing and

signs, interlocking and other signal apparatus, telegraph and telephone lines, station buildings and fixtures, general office building and fixtures, shops, engine houses and turntables, water stations, fuel stations, grain elevators, storage warehouses; dock and wharf property, gas producing plants, and miscellaneous structures. I have taken it as 10 per cent of the cost of reproduction of those items, and this is put in to cover the increased cost of the work due to all unforeseen causes, such as fires, floods, tornados, accidents, strikes, and so forth.

Q. What have you to say as to the justness of that basis of computation, from your standpoint as an engineer?

A. I consider it a fair, conservative amount to be put in to cover the matter of contingencies—that is, to cover all unforeseen things that come up to increase the cost of work; and I have applied it to all of the items into which labor enters very largely in the cost.

Q. Why do you limit it to items in which labor is a large element of cost?

A. Because I thought that that was the fairest way to treat it.

Q. To what extent are contingencies shown by engineering men in estimating the cost of projected work?

A. It is almost universally used in making estimates—a contingency item of some kind.

Q. Can you tell us anything about your experience in making estimates and then doing the work, and afterwards computing and ascertaining the actual results as justifying the use of a contingency item of this kind?

A. Our experience has shown that it is absolutely necessary to use a contingency item of some amount to cover these unforeseen things that increase the cost of work; and where a contingency of ten per cent. has been used, as a rule, I have found that it is not sufficient to cover the increased cost of the work.

Q. Well, if I understand you, if you were projecting the building of this system as a new proposition, without the benefit of any experience which has been had from the building of it, you would think that ten per cent. would be too low to cover the probable actual result of such things as you call contingencies?

A. Yes; that would be my judgment—that ten per cent. would be too low.

Q. And in the actual building of the system, in certain items there has been some experience gained, as for instance,

in such matters as bridge foundations; and that experience has shown that at times the first plan proved inadequate, and more in the way of foundation was required than was estimated, has it not?

A. Yes; in many, many instances. The same would be true of tunnels.

Q. And to a certain extent, in figuring the actual quantities that have gone in on your earlier pages of this exhibit, those quantities are shown as actual quantities now in the roadbed?

A. Yes, being taken from our records they would show very closely what was actually in the structure itself.

Q. Now, to a certain extent that means that what at the outset would be contingency has passed in the exhibit to actual quantities shown on the records, as I understand?

A. Yes, the idea being that in an estimate of this kind it is probably not right to use quite as much of an item for contingency as it would be in an entirely new proposition—that is, where nothing had been uncovered and these problems as to depth of foundation and character of tunnels and material in tunnels had not been found out. In a case of that kind, why, you would probably be justified in using a larger item for contingency than you would in a case of reproduction where a great many of those things had been found out.

Q. That kind of experiences have to do only with the classes of items that involve digging into the ground, does it not—uncovering the condition of the ground underneath the surface?

A. So far as I can recall, that is true.

Q. And they do not touch upon such occurrences as fires, floods, tornados, accidents, strikes, labor troubles or things of that kind?

A. No, that would be illustrated by our experience in Montana last June during the tremendous floods. All of the railroads in Montana were washed out. If a railroad had been under reproduction at that time the cost would have been tremendously increased. It was tremendously increased for the Milwaukee and St. Paul road.

Q. With that explanation, are you able to say whether in your judgment there is any duplication between the actual quantities of such matters as grading, or tunnels, and the charging of ten per cent. for contingencies, as shown on page 21?

A. No; I think there is no duplication in that case.

Q. Pages 22 and 23 cover the steam locomotives on the system. Those are shown the different number and the differ-

ent classes, and I take it, from the appearance of those two pages, that they are an actual reproduction of the actual locomotives, is that true?

A. That is true.

Q. And are those the actual weights of those different classes?

A. Yes, sir; as I understand it. I think it should be brought out that this was prepared by the superintendent of motive power.

Mr. Teal: Do you know these number of engines? That is all I care about. If you fell satisfied the number of engines is right, that is all I care for.

The Witness: Yes, the number of engines and the number of cars is.

Q. You are satisfied of the correctness?

A. Yes, I am satisfied of the correctness.

Mr. Teal: I am satisfied they wouldn't make it inaccurately on purpose.

Mr. Walter: It is all new?

The Witness: Yes, sir; the cost of reproducing new.

Q. And the summary is shown at the foot of page 25 of all the different items of equipment?

A. Yes, sir.

Q. Now, coming to page 26. It is entitled "General Expenditures." The first item "Legal, Organization and Other Expenditures," is estimated at 3 per cent. of the total cost of road and equipment. Explain that, will you please?

A. That is taken to cover what it states—the legal organization and other expenditures—during the construction period, and would cover all expenses of organization and the expenses of all executive and accounting officers, in fact all expenditures of that nature, except engineering expenses, during the construction of the railroad.

Q. Obviously, Mr. Hogeland, that is an approximation, and rests largely, as a matter of judgment and also of experience. Now, I wish you would explain the basis, or how you arrived at 3 per cent.?

A. Well, it was taken because that is a usual figure to take for that purpose. I cannot say that based on my experience—it would be somewhat out of my knowledge—but it is a general percentage used to cover those items.

Q. Well, in the planning of a large engineering work, it is always necessary to figure a certain percentage for those kinds of expenses, is it not? That is the fact, is it not, that in all large engineering enterprises—

A. It is absolutely necessary to incur some expense in the matter of organization; and legal expenses are bound to be taken care of in connection with all of the construction work. All of your accounting work that must be done during construction would be charged to that account.

Q. And it is necessary, is it not, during the process of construction of an enterprise of this character, to maintain during the construction period both a legal organization, an organization of superintendence and accounting men?

A. And in addition to that I think a very important executive organization to plan and carry out the large undertaking.

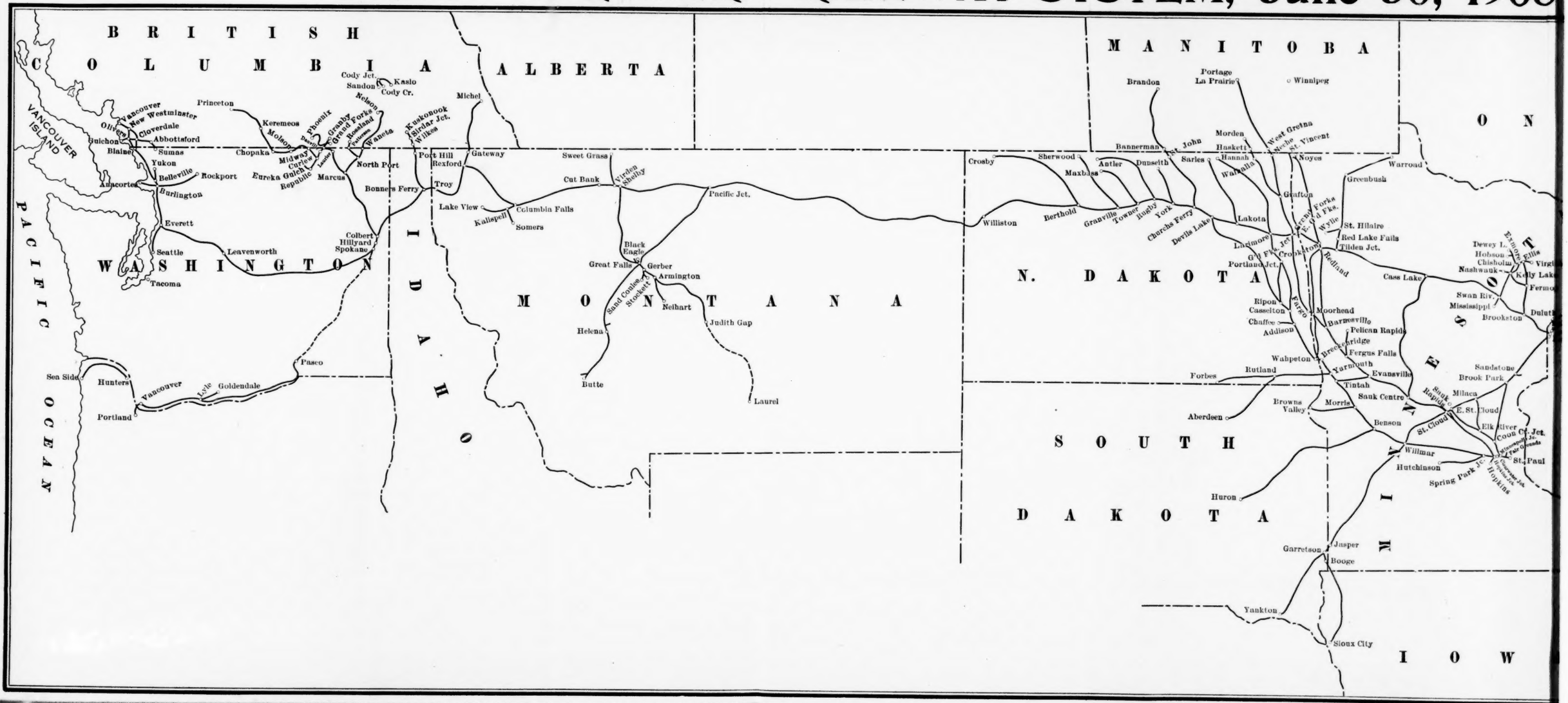
Q. The next item is "Interest During Construction." Now, have you a map here of the Great Northern line?

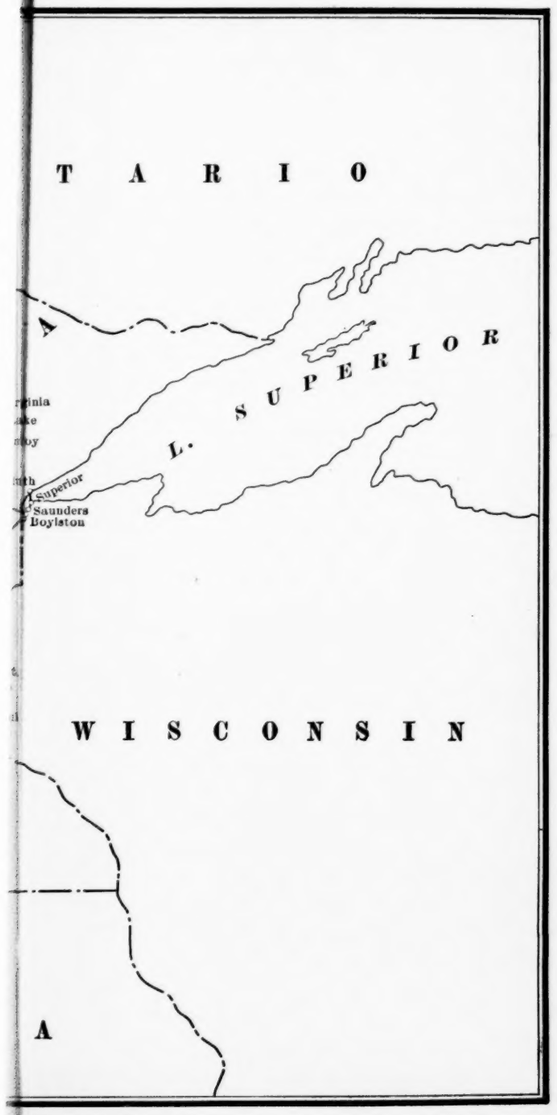
(Map produced.)

Mr. Holden: I would like to offer in evidence a map of the lines of the Great Northern System, and ask that it be marked "Complainants' Exhibit 20 (Hogeland)."

(The map produced was so marked.)

GREAT NORTHERN RAILWAY SYSTEM, June 30, 1908





WISCONSIN.

State Line at Foxboro to Superior, including connection with D. S. & W. at Saunders	21.88	
Boyleston Junct. to State Line	10.31	32.19

MINNESOTA.

St. Paul via Barnesville to International Boundary at Noyes, including line to St. Vincent	392.72	
State Fair grounds branch, St. Paul	.64	
Coon Creek Junct. to State Line at Foxboro	112.01	
To Quarries at Sandstone	2.61	
In Duluth	.38	
Elk River to Milaca	31.81	
East St. Cloud to Brook Park	58.30	
East St. Cloud to Sauk Rapids	2.13	
St. Cloud to Willmar	55.56	
Sauk Center to Cass Lake	140.00	
Evansville to Tinta	32.01	
Fergus Falls to Pelican Rapids	21.65	
Barnesville to State Line at Moorhead	22.79	
Moorhead to Redland	66.05	
Minneapolis to State Line at Breckenridge	208.56	
Hopkins Junc. to Hopkins	3.57	
Spring Park Junc. to Hutchinson	43.90	
Clearwater Junc. to St. Cloud	63.08	
To Dam, St. Cloud	2.57	
Wilmar to State Line south of Jasper	122.64	
So. Dakota Line to Iowa Line	11.27	
Benson to So. Dakota Line	46.18	
Morris to Browns Valley	48.60	
Yarmouth to Nor. Dakota Line	9.18	
North Dakota Line to Moorhead	36.80	
Wisconsin State Line to Redland	247.94	
Brookston to Ellis	46.51	
Mississippi River to Dewey Lake and Virginia	66.41	
Kelly Lake to Fermoy	23.40	
Kelly Lake to Exmore	9.69	
Red Lake Falls to Greenbush	61.23	
St. Hilaire to Wylie	7.49	
Crookston to East Grand Forks	23.60	
Branches to Mines	31.28	2052.56
Carried Forward,		2084.75

SOUTH DAKOTA.

Brought Forward		2084.75
Minn. Line near Jasper to Minn. Line near Booge, via Garretson	12.66	
Garretson to Yankton	80.94	
Minn. Line to Huron	115.31	
Nor. Dakota Line to Aberdeen	53.45	262.36

IOWA.

Minn. State Line to Ctr. of Division Str. Sioux City	76.58	76.58

NORTH DAKOTA.

State Line at Fargo to Grand Forks	77.53	
State Line at Wahpeton to Devils Lake	180.60	
Minn. State Line to Forbes	109.25	
Rutland to South Dakota Line	10.46	
Wahpeton to Minn. State Line north of Lurgan	6.02	
Addison to Chaffee	11.78	
Casselton to Larimore	74.67	
Ripon to Portland June.	41.09	
Grand Forks to Montana State Line	350.99	
Grand Forks to International Boundary at Neche	81.35	
Grafton to International Boundary north of Walhalla	53.44	
Larimore to Hannah	94.95	
Lakota to Sarles	73.13	
Churchs Ferry to International Bndy. north of St. John	59.08	
York to Dunseith	42.27	
Rugby to Antler	80.84	
Towner to Maxbass	46.10	
Granville to Sherwood	61.82	
Berthold to Crosby	89.16	1544.53

MONTANA.

North Dakota Line to Idaho Line	691.42	
Shelby to Great Falls	97.97	
Virden to International Boundary at Sweet Grass	36.54	
Columbia Falls to Lake View	51.68	
Kalispell to Somers	10.45	
Rexford to International Boundary at Gateway	8.86	
Pacific Junc. to Butte	290.78	
Great Falls to Judith Gap	121.17	
Armington to Neihart	38.27	
Carried Forward	1347.14	3968.22

Brought Forward	1347.14	3968.22
Gerber to Stocket	8.09	
Lewis to Sand Coulee	2.39	
Fair Grounds Branch, Great Falls	1.96	
B. & M. Smelter Branch, Great Falls	5.07	
Fair Grounds Branch, Helena	.68	
Mountain View Branch, Butte	3.32	1368.65

IDAHO.

Montana Line to Washington Line	80.24	
Bonners Ferry to International Boundary Port Hill	25.79	106.03

WASHINGTON.

Idaho Line to Seattle	386.91	
Hillyard to Spokane	4.30	
Colbert to International Boundary at Waneto	125.84	
Northport to International Boundary at Paterson	7.47	
Marcus to International Boundary at Laurier	27.66	
International boundary at Danville to Republic	31.70	
Republic to Eureka Gulch	9.80	
Curlew to International Boundary at Midway	14.52	
International Boundary near Molson to International Boundary at Chopaka	48.46	
Everett to International Boundary at Blaine	89.10	
Anacortes to Rockport	57.72	
Belleville to Yukon	11.38	814.86

MANITOBA.

Midland Ry. of Man. International Boundary at West Gretna to Portage La Prairie	77.01	
Midland Ry. of Man. International Boundary near Hackett to Morden	15.25	
B. S. & H. B. Ry. International Boundary near Bannerman to Brandon	69.45	161.71

BRITISH COLUMBIA.

Crows Nest Southern Ry.—Boundary at Gateway to Michel	74.18	
Nelson & Ft. Shephard Ry.—Inter. Bndy. at Waneta to Troupe Jct.	55.42	
Red Mountain Ry.—Int. Bndy. at Paterson to Rossland	9.59	
V. V. & E. Ry. & Nav. Co.—International Bdy. at Laurier to Int. Bdy. Danville, incl. line to Grand Forks	16.47	
Carried Forward	155.66	6419.47

Brought

V. V. & E. Ry. & Nav. Forks to Phoenix

V. V. & E. Ry. & Nav. C Granby Smelter

V. V. & E. Ry. & Nav. Co.— near Midway to Inter. Molson

V. V. & E. Ry. & Nav. Co.— at Chopaka to Keremeos

V. V. & E. Ry. & Nav. Co.— minster to Vancouver

V. V. & E. Ry. & Nav. Co.— to Port Guichon

New Westminster Southern national Boundary at Brownsville

Bedlington & Nelson Ry.—In Boundary at Port Hill to

Bedlington & Nelson Ry.— to Kuskonook

Kaslo & Slocan Ry.—Kas don including line from C Cody

DULUTH TERMINAL RAILWAY.

MINNEAPOLIS WESTERN RY.

UNION TERMINAL RY. (SIOUX

To

WISCONSIN.

oxboro to Superior, in-ction with D. S. & W.		
.....	21.88	
to State Line.....	10.31	32.19

MINNESOTA.

nesville to International Noyes, including line to		
.....	392.72	
nds branch, St. Paul...	.64	
et. to State Line at Fox-		
.....	112.01	
Sandstone.....	2.61	
.....	.38	
ilaca.....	31.81	
to Brook Park.....	58.30	
to Sauk Rapids.....	2.13	
Villmar.....	55.56	
Cass Lake.....	140.00	
Finta.....	32.01	
Pelican Rapids.....	21.65	
State Line at Moorhead.	22.79	
Redland.....	66.05	
State Line at Brecken-		
.....	208.56	
to Hopkins.....	3.57	
nc. to Hutchinson.....	43.90	
e. to St. Cloud.....	63.08	
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ns Valley.....	48.60	
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Addison to Chaffee.....	11.78	
Casselton to Larimore.....	74.67	
Ripon to Portland Junc.....	41.09	
Grand Forks to Montana State Line...	350.99	
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Grafton to International Boundary north of Walhalla.....	53.44	
Larimore to Hannah.....	94.95	
Lakota to Sarles.....	73.13	
Churchs Ferry to International Bndy. north of St. John.....	59.08	
York to Dunseith.....	42.27	
Rugby to Antler.....	80.84	
Towner to Maxbass.....	46.10	
Granville to Sherwood.....	61.82	
Berthold to Crosby.....	89.16	1544.53

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North Dakota Line to Idaho Line.....	691.42	
Shelby to Great Falls.....	97.97	
Virden to International Boundary at Sweet Grass	36.54	
Columbia Falls to Lake View.....	51.68	
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Gerber to Stocket.....	8.09	
Lewis to Sand Coulee.....	2.39	
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Mountain View Branch, Butte.....	3.32	1368.65

IDAHO.

Montana Line to Washington Line....	80.24	
Bonners Ferry to International Boundary Port Hill.....	25.79	106.03

WASHINGTON.

Idaho Line to Seattle.....	386.91	
Hillyard to Spokane.....	4.30	
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Marcus to International Boundary at Laurier	27.66	
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Carried Forward	155.66	6419.47

Brought Forward	155.66	6419.47
V. V. & E. Ry. & Nav. Co.—Grand Forks to Phoenix.....	25.82	
V. V. & E. Ry. & Nav. Co.—Line to Granby Smelter	4.74	
V. V. & E. Ry. & Nav. Co.—Inter. Bndy. near Midway to Inter. Bndy. near Molson	28.89	
V. V. & E. Ry. & Nav. Co.—Inter. Bndy. at Chopaka to Keremeos.....	18.20	
V. V. & E. Ry. & Nav. Co.—New Westminster to Vancouver.....	14.79	
V. V. & E. Ry. & Nav. Co.—Cloverdale to Port Guichon.....	17.31	
New Westminster Southern Ry.—International Boundary at Douglass to Brownsville	24.10	
Bedlington & Nelson Ry.—International Boundary at Port Hill to Wilkes....	12.04	
Bedlington & Nelson Ry.—Sirdar Jct. to Kuskonook	3.26	
Kaslo & Slocan Ry.—Kaslo to Sandon including line from Cody Jct. to Cody	31.59	336.40
		6755.87
Duluth Terminal Railway.....		1.82
Minneapolis Western Ry.....		1.69
Union Terminal Ry. (Sioux City).....		1.28
Total Mileage		6760.66

Q. The lines in red on this map, Exhibit 20, shows the lines of the Great Northern System, do they not?

A. Yes, sir.

Q. And in the State of Montana I notice a dotted red line from Judith Gap to Laurel.

A. That represents a portion of the Billings and Northern, which was under construction at the date of this cost of reproduction.

Q. And your figures in this exhibit only include the work up to June 30, 1908, on that line, do they not?

A. Yes; except that in item 37 (the first page of Exhibit 15) we show lines under construction; and whatever had been spent on that line up to June 30, 1908, would be included in that.

Mr. Walter: Some seven millions in number.

The Witness: Yes.

Mr. Walter: Nearly eight millions.

The Witness: I wish to say that that is not the only line which is under consideration. This would be one of the lines that is under construction.

Q. And the lines represented in green, from Spokane to Portland, and a small additional line running out to Sea Side are the completed and projected lines from Spokane and Portland to Seattle?

A. Yes, sir.

Q. In those lines the Great Northern owns a half interest with the Northern Pacific?

A. Yes, sir; I understand so.

Q. On the first page of your Exhibit 15 is shown the interest of the Great Northern in that system, as the actual money which the Great Northern has advanced up to June 30, 1908, for the construction?

A. Yes, sir; that is the way I understand that.

Q That is the basis of that item on the exhibit?

A. Yes, sir.

Q. In making up your estimate as to what it would cost to reproduce the lines of the Great Northern up to the condition they were in on June 30, 1908, how many years did you assume would be necessary, with any regard to economy and expedition both, for that purpose?

A. I figured that in eight years the work might be far enough advanced so that some portions of the lines might be earning some revenue, but that for the eight year period there would be no revenue from any of the lines. Whether or not

they could all be completed in the eight years I doubt very much, especially fully ballasted and steel bridges put in as they exist to-day. I feel very sure it would take longer than the eight years to do that. But I consider, as I stated before, that after eight years there might be revenue from some of the lines, sufficient to bring a little return on the investment. For that reason I have used an eight year period as the period that the capital would be idle, and of course on that basis it would all be idle for half of that period. That is, I have taken four years' interest at six per cent. per year for all of the road items and two years at six per cent. for the equipment items.

Q. You said a moment ago that your judgment would be that for eight years there would be no revenue. Do you mean by that net revenue over and above the cost of conducting the business?

A. Yes, I meant revenue over and above any operating expenses,—any revenue that would produce returns which could be applied to the capital.

Q. I wish you would state again—I didn't quite understand it myself—the basis on which you computed the interest on the cost of the road items. What do you mean by road items? It is not necessary to read them all over, but what did you eliminate from the list on the first page of the exhibit?

A. I did not eliminate anything. All of the road items, 1 to 29, covering all of the road items—I figured interest on those items at 24 per cent., and on the equipment—which would be items 30, 31, 32 and 33—I figured at 12 per cent.

Q. The 24 per cent. is arrived at by taking an average of 4 years for the entire amount at 6 per cent.?

A. Yes, sir.

Q. And the equipment is taken—

A. At 2 years. 2 years at 6 per cent.

Q. Have you any knowledge of actual experience on the lines of the Great Northern as to how long it has been, in certain cases, before they have shown a net return after they began operation?

A. Yes. The Pacific extension from what is called Pacific Junction, just west of Havre, Montana, to the coast. The construction was started in 1890, and up until 1898 the revenue had not been sufficient to more than cover the operating expenses, and it was four years more than that before the revenue, over and above operating expenses, was sufficient to pay 6 per cent. on the original investment.

Mr. Teal: Are you cutting out the coast extension part

and charging its earnings that it made just to that particular part of the system, is that the idea? Is that the way you arrived at that?

The Witness: My understanding of that, Mr. Teal, is they took that right down to Seattle.

Mr. Teal: But the main thing I want to know is, do you know these things yourself?

The Witness: Well, the figures were furnished me by the accounting department.

Mr. Teal: That is what I am getting at.

The Witness: Yes, sir.

Mr. Teal: Covering just that piece of road in there?

The Witness: Yes.

Mr. Teal: As segregated from the balance of the system?

The Witness: That is right.

Q. From Havre, Montana, clear to Seattle?

A. Yes. That would carry it through Spokane and Wenatchee and Everett down to Seattle.

Q. But the figures, or the results, that you have testified to, were furnished you from the accounting department?

A. Yes, sir.

Q. As appearing on the books of the company?

Mr. Teal: I would like to say that unless Mr. Hogeland will submit, and is qualified to submit, to an examination from the accounting department of this company and the earnings of the company, any evidence that goes to facts of that character, I should object to it.

Mr. Holden: I think your objection is well taken. I don't mean to suggest to Mr. Hogeland. We will show that from the books of the company.

Q. Now, you show an item of stores and supplies on hand, of $8,219,581. Is that an actual inventory of the supplies on hand over the system, as of June 30, 1908?

A. Yes, sir; and was furnished us by the accounting department from the inventory of supplies on hand at that time.

Q. What have you to say, from your experience and knowledge as to the necessity for an item of that kind, or that quantity of supplies?

A. As applied to that mileage, my experience teaches that it is not excessive. It is the amount of supplies carried by the storekeepers to take care of current work on the railroad.

Q. The next item embraces lines under construction. The value of the right of way and station grounds was furnished, I take it, by the real estate department?

A. Yes, sir.

Q. The next item is actual money expended on such lines for construction purposes, as shown by the books, is it not?

A. Yes, sir; except for right of way and station grounds—that being made a separate item.

Q. But the five million and odd is the mere actual expenditure up to that date on those lines under construction?

A. Yes.

Q. It does not embrace, however, the Spokane, Portland & Seattle line?

A. No, sir.

Q. The value of the material and stock on lines under construction is, as you stated, in reference to the general stores and supplies, is it not?

A. Yes, sir; except this would be material right on hand to go into the new piece of railroad.

Q. But it had already been bought and was about to be put in place?

A. Yes, sir.

Q. The next is the value of terminal properties at Winnipeg and Tacoma. That is land, is it not?

A. That is land.

Q. Already covered by the exhibit of Mr. Hayden. The last items are interest in terminal railways. The Great Northern owns one-tenth of the Minnesota Transfer, does it not?

A. Yes, sir.

Q. And 1/9 in the St. Paul Union Depot?

A. Yes, sir.

Q. And 1/3 in the Lake Superior Terminal & Transit?

A. Yes, sir.

Q. And those figures were taken, if I understand it, from the returns made to the Minnesota Warehouse and Railroad Commission by those terminal companies?

A. Yes; except the Lake Superior Terminal and Transfer Company did not make a return to the Minnesota Commission. That was taken from the statement of the cost of reproduction of that piece of railroad.

Q. They are not a Minnesota corporation?

A. That is in Wisconsin.

Q. And the final item is the interest you have already spoken of in the Portland and Seattle road, and represents the actual charges for that construction on the books of the Great Northern road?

A. Yes, sir; as of June 30, 1908.

Mr. Holden: Now, I offer in evidence "Complainants' Ex-

hibit 15 (Hogeland)." I don't know whether I formerly offered it or not.

The Master: Mr. Holden, do you claim that in estimating the value of this road, or the property, by this method, that you are entitled to charge interest on the original investment up to such time as it begins to show a revenue over and above operating expenses?

Mr. Holden: Not stated just in that way, if your Honor please. The problems met by the engineers—and I think it is necessary to keep that clearly in mind—are to figure out, as nearly as may be, what it would presently cost to reproduce the operated system. Now, on the question of interest it seems to us the conservative thing to do is to figure just as the past has shown, that as you build this line you have got to have your money coming along, and that money, as we have to get it from outsiders, has to bear interest.

Mr. Teal: Why have you to get it from outsiders?

Mr. Holden: We haven't got it.

Mr. Teal: Then the bonds are to build this road?

Mr. Holden: Now, wait a minute. We are not talking about bonds. We are not talking about stock; we are talking about the money that goes in to build the property. We are not talking about capital issues of any kind. We are talking about the actual cost, regardless of where it comes from. Whether we have it ourselves, we would be entitled to interest on it. But it is the cost of the physical properties.

Now, in constructing these properties everybody will concede that a certain length of time, as a minimum, would be required; and during that time the money has got to go in, and will not bring back a return; and the problem is to determine a fair basis of ascertaining the interest that would have to be paid during the construction period. If the money was obtained in New York, for instance, every six months there would have to be an interest payment. Now, that all means value, as we shall ultimately argue.

The Master: The loss of the interest pending the time that the property cannot be used.

Mr. Holden: Exactly—because there seems to be no other way to reproduce the property, except to take a considerable period of time to build it. Now, we shall argue that that necessary condition of affairs means value in the property, because it cannot be gotten in any other way. And if you take and analyze the same proposition in the smaller way—like building this hotel over here to-day: Now, the builders of that hotel have had to arrange for the money to meet the pay rolls,

and they have either had to take it out of their own pockets and charge themselves, in determining the ultimate result of that investment, as any prudent man would, and interest for the use of his money, or they have had to go to an insurance company, or mortgage company, and borrow the money; and they have had to pay interest every six months. Now, that means value in that hotel property, because it cannot be avoided.

The Master: It means cost; it may not necessarily mean value.

Mr. Holden: It means cost. That is a more accurate statement. It means the cost. Now, that is the foundation; and it is only one element of determining what is the value. And if anyone comes to you and asks you what is the value of that building, you have several points in view. You can go to an architect, you can go to a contractor, or you can go to a real estate man and say, "What would it cost to rebuild that building," and he will tell you. Then you look at the surrounding conditions and see whether that building is in the line of progress in the town. Those things add value. So, I say this lays the foundation for determining this question; and on the interest item we know that you cannot reproduce anything of substantial size without it. It takes money to produce it, and it takes interest to get the money, and that enters into the value.

(A recess of a few minutes was here taken.)

Cross-Examination.

By Mr. Teal:

Q. Mr. Hogeland, you were in the employ of the Great Northern Railway Company in the years 1907 and 1908?

A. Yes, sir.

Q. And 1906?

A. Yes, sir.

Q. You were not called as a witness before the Interstate Commerce Commission in the rate case out of which this case grows,—the Lumber Rate Case—were you?

A. No, I understand not. I was in that Spokane hearing, but not in this.

Q. During the time that you have been in the employ of the Great Northern Railway Company, how many different times do you think you have testified to the value of this road and to the cost of its reproduction?

A. I testified once at Portland in 1907, and I testified again, about a month ago, in the Minnesota rates cases, and my testimony to-day, I think, constitutes three times.

Q. You think those are the only times you have testified as to the cost of reproduction?

A. Of the system?

Q. Yes.

A. Yes, sir; I think that is all.

Q. Have you testified in any cases as to the cost of reproduction of any part of the system?

A. As to Minnesota, yes.

Q. When was that?

A. About a month ago.

Q. Oh, you just testified about that?

A. Also both the system and Minnesota at that time. I believe that is all the testimony I have given as to any part of the system.

Q. Now, in this testimony that you gave in this Minnesota case, on the system, did you use the same figure you are using now?

A. Yes, sir.

Q. When you appear as a witness in a case of this character, do you feel that you are testifying as an expert for the purpose of giving the court, as nearly as you can, a true statement of the cost of reproduction?

A. Yes, sir; I certainly do.

Q. And whenever you testify before a court, that is your aim and that is your effort?

A. Yes, sir; it is.

Q. And you feel that responsibility?

A. I do.

Q. Now, the testimony taken as to the cost of reproduction in the Spokane case covered the cost of the road as of about April, 1907, did it not?

A. Yes, sir; as of about April, 1907, is my recollection.

Q. And this is as of about July 1, 1908?

A. Yes, sir.

Q. Now, in your testimony in the Spokane case, you intended in that case, in response to the questions, to give not only truthful answers, of course, but to give at that time your best judgment as to the cost of reproduction, did you not?

A. I did.

Q. And how do you think your figures were there?

A. They were considerably under the figures at the present time.

Q. Now, if you have been with the company now thirty years, you then had been with the company about 28½ years, hadn't you?

A. Yes.

Q. In other words, you had all of the experience that you now have had excepting whatever experience you have gained since that date?

A. That is true.

Q. Now, in that case, when you prepared this statement to cover organization expenses, expenses incurred in disposal of securities, purchases of material, equipment, salaries and expenses of general officers, et cetera, parties engaged in construction work, attorneys' salaries, fees and expenses, and all, incidental legal expenses incurred during construction, estimated at one per cent of all items except interest—was that your honest opinion at that time, that that would cover it?

A. Yes, sir; it was my honest opinion at that time.

Q. You now think it would take three per cent?

A. That is the way I put it in the statement, and that is what I believed it would take.

Q. And you believed the other then?

A. I believed the other then; yes, sir.

Q. Now that, in itself, made a difference in this valuation of two per cent on $348,000,000, didn't it, or it would make it?

A. It would make quite a difference.

Q. Well, it would make two per cent difference on the same amount that you figured on here, wouldn't it, Mr. Hogeland?

A. Yes, sir; it would make about that difference, 2 per cent, yes, sir.

Q. Now in your Spokane Statement your interest charge was very different from what it is now, was it not?

A. Yes, sir.

Q. In that you estimated that the entire amount of money required to reproduce the system and equipment would be unproductive for a period of two years. It is assumed the system can be reproduced in eight years, or at the rate of 1,000 miles of main and side track per year, and that about $50,000,000 would have to be raised each year. It would be two years after the beginning of the work before the first 1,000 miles would produce revenue sufficient to pay interest on the investment, and so on, with each 1,000 miles built each succeeding year; so that all the time the system was being built,

interest would have to be paid on the money raised for the construction, on the entire amount, for a period of two years. That is the way you figured it then, didn't you?

A. That was my opinion at that time; yes, sir.

Q. And you assumed the rate of interest then to be five per cent, didn't you?

A. Yes, sir.

Q. Now you have doubled the length of time, and raised the rate of interest? That is correct, too, isn't it?

A. Yes, sir.

Q. So that instead of it being the cost of reproduction, the interest charge of (in round numbers) $38,000,000, under the Spokane estimate, it is now about $93,000,000?

Mr. Holden: There has been considerable money spent on the system between the periods.

Mr. Teal: I will have it all in by and by. The reports show the difference.

Q. That is correct, isn't it?

A. That is about correct, yes—an increase of about $55,000,000.

Q. And at the time that you made the estimate for the Commission in this Spokane case you were using your very best judgment as an engineer and as an expert to give them your honest opinion as to what the interest charge would really be. That is correct, isn't it?

A. That is correct; yes, sir.

Q. And since then you have changed your opinion?

A. I have.

Q. Your whole estimate here is based on the fact, necessarily, that the money would be on hand, in order to pay for the work as it goes along; that is correct, isn't it?

A. Not all of it at one time.

Q. No, but as required?

A. As required; yes, sir.

Q. Therefore it will be borrowed, if that is the way railroads are built, or if the man who has the money will advance it—a man either with sufficient credit or sufficient money to advance these millions of dollars as the work requires it—that is correct, isn't it?

A. Well, I don't know how the money would be raised, I am sure.

Q. But you are assuming it will be on any of these amounts that are required?

A. Certainly.

Q. Therefore you must assume that whoever is building

this road either has the credit to borrow the money, or has the money himself? You must assume that, don't you?

A. Why, no, I make no assumption of that kind at all.

Q. Well, where do you get your money from?

A. I am sure I don't know how the money would be raised. But you would certainly have to pay interest on it, no matter how you raised it, until you had revenue sufficient to bring in the return.

Q. Well, let us put it in another way. What is the going rate of interest in the year 1908 upon bonds of the Great Northern system and upon bonds of the Northern Pacific system? Do you know any that are sold at a greater basis than four per cent?

A. I cannot tell you what the going rate of interest would be.

Q. Then, what did you base your 6 per cent on?

A. I based that on advice that I received from our accounting people, our executive people, as to what would have to be paid for money raised for an enterprise of this kind.

Q. Then if they had told you 8 per cent you would have used that, wouldn't you?

A. If it would come from the proper people I would say I would use it; yes, sir.

Q. The proper people are the people who gave you the 6 per cent, aren't they?

A. I think so.

Q. And if they told you 10 per cent you would have used that?

A. I would consider that they knew more about that feature of it than I do.

Q. Then so far as this report is concerned, the 6 per cent interest proposition is based upon what you were told to figure on by the accounting department of your company, is that right?

A. No, I say my opinion was influenced by advices from our executive and accounting officers, who knew much more about that feature than I do. In other words, I was told that the interest charge which I have used—the rate per year in the Spokane testimony—was too small; that the money could not be raised for an enterprise of this kind for that rate of interest. I have confidence in those people and I believe they are right.

Q. And you raised it. Now the Northern Pacific, in the Spokane case, figured on a basis of four per cent?

A. I don't know as to that.

Q. You don't know as to that?

A. No.

Q. So that that is the way you arrive at your interest charge?

A. The rate, you mean.

Q. Yes, the rate.

A. That is the reason I took the larger rate. And I want to say that that agrees with what I now believe would be required.

Q. I would like to clear this up: You made a statement a while ago that you think that a system of this character, built in the country this is being built in, would run about eight years before it would begin to pay anything above operating expenses. Did I so understand you?

A. Yes, that was my reason for using the four year period—that you would have to pay interest on your money.

Q. Then, as illustrative of that you take one section of the road, and you say that you know that particular section of the road did not earn operating expenses, or more than operating expenses, for a number of years?

A. Yes, take a period of about eight years.

Q. Now, you are familiar, to some extent, with the old Central Pacific, of course.

A. I have been over it; yes, sir.

Q. Isn't it a fact that there is to-day, in the Southern Pacific system—and the same remarks are applied to the Santa Fe, with which you are also familiar—sections of that road which, if you segregate them as sections—Take the Central Pacific through portions of Nevada, the Atchison, Topeka & Santa Fe, through certain portions of Arizona, and the same with the Southern Pacific through Arizona—that do not pay to-day?

Mr. Holden: Just a minute. Let me ask a question. Do you mean just from their local business, or from all business that is credited to that part of the line?

Mr. Teal: You can give all the business they will get out of that end of their business.

The Witness: I imagine that may be true. But I want to say there is no such desert country on the Great Northern.

Q. You have been with the Great Northern a long time, haven't you?

A. Yes, sir.

Q. Do you know when the Great Northern began to pay dividends?

A. No, I can't tell you as to that.

Q. Well, it commenced to pay dividends long before it got to the Pacific coast, didn't it?

A. Yes, undoubtedly it was paying dividends before it got to the Pacific coast.

Q. And it paid dividends all the time thereafter, didn't it?

A. Yes, it has.

Q. And do you know a time, since Mr. Hill has had charge of that road, that it has not paid over operating expenses and interest, since he acquired it many years ago?

A. The entire road?

Q. Yes. Take that whole system that he acquired.

A. I cannot speak of the first few years; but certainly in all recent years.

Q. In other words, as the road went out and was developed, it used to be Mr. Hill's boast that he made money as he went along, didn't it?

A. I cannot say as to that.

Q. Well, you know that it did, don't you? You know that as he extended that road out to the Dakotas and made his extensions from time to time it was a paying road almost from the time the rails were down, don't you?

Mr. Holden: You mean the road as a whole, do you?

Mr. Teal: Yes, I am building a road with him now. I am taking a road that he is familiar with (addressing the witness). You must be. You have been all over this.

A. Which?

Q. You have been with it thirty years and you have been all over it.

A. I want to get the full extent of your question. I don't quite understand your question.

Q. What I say is this: That as the Great Northern extended its branches and got out of Minnesota, out into the Dakotas and kept going Westward slowly, that road kept paying dividends all the time, didn't it?

A. I think it did.

Q. And it has paid dividends ever since it reached the coast, too, hasn't it?

A. I believe it has.

Q. Then what do you mean by saying that a road that would be built even as you contemplate building this road, through that same country—because you must have the same development; otherwise these terminals won't cost you that—that a road building out from cities like Minneapolis and St. Paul into cities like Duluth, into places like Great Falls, all over

this section, with a thriving community all through them, that you would sit up here and say that in your judgment a road, as it was built, even though it would take eight years, won't pay as it goes along, long before the eight years are expired?

A. No, I don't think that necessarily follows.

Q. You don't think that would follow?

A. I don't think that necessarily follows.

Q. You think, then, that it is a fair way for you to prepare an estimate to submit to the court, taking terminals, taking rights of way through one of the most fertile sections of the United States, in order to make up a statement of this kind, to say that, notwithstanding all of those things, that road would not pay expenses for eight years?

A. Why, I think that is perfectly true.

Q. You think it is?

A. Yes, sir.

Q. Was it true with the Great Northern?

A. It wasn't built in eight years.

Q. But I say, was it true with the Great Northern since Mr. Hill acquired it?

A. Was what true?

Q. The fact that it did not pay as it was extended?

A. The entire system, of course, has paid, because they had these completed lines which were earning the money.

Q. Why didn't they take eight years?

A. That is the basis, I think, that would explain why it has not failed to pay a dividend.

Q. Why do you take eight years then?

A. I explained that pretty fully—that I thought the line could be built in 8 years and placed in good enough condition to take care of the business. But it could not be fully completed in the way of ballasting and steel bridges. I do not think that could be completed in eight years.

Q. Let me ask you another question: Then you considered this plan that you have adopted, from the standpoint of the investor, the most economical way to construct that road, so as to get the best returns?

A. I think so.

Q. You think, then, as an engineer, if capitalists come to you to invest in this road, that you would suggest building a road in 8 years, and build it so that there could be no net returns in eight years, through this country?

A. Oh, I take all the returns you can get. But this is true: that whenever you try to do business at the same time

that you are constructing a railroad, the chances are you do it at a loss. Now, that has been true of practically all of our extensions—that to operate construction trains and to build a railroad and try to do commercial business on it at the same time is a pretty poor proposition.

Q. You are familiar with the Chicago, Milwaukee & St. Paul, are you not?

A. Their coast extension?

Q. Yes, you know they are extended.

A. In a general way, yes.

Q. Do you know whether or not they have operated any part of that extension for passenger and freight business as they went along?

A. Yes; I think as they went into an important town they started in operation.

Q. You know they have, don't you?

A. I have not been over it, but I have understood that.

Q. I don't suppose you have examined their literature at all, but if you have walked down town here any time you have seen their maps in the window and their advertisements about their Pacific coast extensions and receiving passengers and freight, haven't you?

A. Yes, sir.

Q. Well, then, they have operated, haven't they?

Mr. Holden: Just a minute.

A. Yes; but there is nothing to show that they have operated at anything over the cost of operating expenses.

Q. You are sure of that, are you, Mr. Hogeland?

A. No, no, as I say there is nothing to show, as far as I know, they have done that. Of course, it would be to the interest of any company building, like the Milwaukee has done, to build up their business as soon as they could, and to get on trains, even though they should operate them at a loss, in order to build up their business.

Q. So that now you think that this interest charge, as you have figured it now, is right, and the interest charge, as you figured it fifteen or eighteen months ago for the Spokane case is wrong?

A. I think it was too low before.

Q. Now then, taking this Minnesota valuation and State's valuation: how far are you and the State apart on the property in Minnesota?

A. Well, the State has made two statements. I don't know which one they intend to—

Q. Let us take the highest one. How far are you apart between their highest and your lowest?

A. I think about $40,000,000.

Q. About how much?

A. About $40,000,000, I think.

Q. About $40,000,000 for this one state?

A. I think so.

The Master: Just in the State of Minnesota?

The Witness: I think so; yes, sir. I may be off some on that. But it is about that.

Q. Now, Mr. Hogeland, there are one or two things that I do not know whether I misunderstood you about, but which I wanted to ask you about: There were three or four exhibits put in here to-day. One is Hogeland's 16, one is Hogeland's 17, one 18, and one 19. Now, I may have misunderstood you. If I did, I want to be corrected. As I understand, these various cost items appearing in these exhibits are as shown by the books of the Great Northern Railway Company?

A. Yes, sir.

Q. That is, on the books of your company we will find these items entered as you have entered them here—any of them?

A. Yes. You may have to make some additions, but you will be able to pick them all out.

Q. What I mean is this: Take your cost item on ties, or whatever it is—Do your books show any of those?

A. Certainly, they show those charges.

Q. That is not what I asked you. I asked you, did they show this character of table, so you can go there and check up this table?

A. No. You get that table in a separate way.

Q. In other wards, the way these tables are made up, then, you selected different items and prepared these tables from the items as shown by the books; that is correct, isn't it?

A. Yes; I have taken the items and shown them—

Q. Now, take for instance, the cost of the grading—contract grading, quantities and prices, from 1898 to 1907.

Mr. Holden: That is exhibit 16.

Mr. Teal: That is Exhibit 16.

Q. Now I understand you to testify that that is an accurate statement showing the actual cost for the work that is covered by that statement. Is that correct?

A. Yes, sir.

Q. And you have been able to show that from 1898 to 1907?

A. Yes, sir.

Q. And there was no particular selection made, was there?

A. No, we took the lines as they come and were built from that period, 1898, up to and including 1907.

Q. And took the actual book cost as shown by the books?

A. Yes, sir. You must recollect that this applies only to grading.

Q. Yes, I understand. And if I understand you correctly, those are the only lines built during that time?

A. There may have been some shorter, other lines, which it was more difficult to get the charges on. I am not positive as to that. But we intended to include all of the lines between those dates.

Q. From 1898?

A. Yes, sir.

Q. Now I would like to know how you arrive at an average there—take the cubic yards of earth at 19.3 per cent: How was that average arrived at?

Mr. Holden: 19.3 cents, you mean.

Q. 19.3 cents per cubic foot.

A. Cubic yard.

Q. Yes, cubic yard.

A. That is obtained by dividing the total amount paid contractors for earth by the total yards of earth, which would then give an average price per yard for earth, covering that 28,675,436 yards of earth.

Q. It wasn't an addition, then, of that column, and a division by the cost of the column itself, was it?

A. The total charges are not shown there, as you will see. It shows the total yardage and the price per yard paid contractors on each line; and then to get the average for all the lines, why, you have to divide the total charges by the total yards.

Q. And that is the way you arrived at that?

A. That is the way I arrived at that, yes.

Q. That is the way you arrived at the percentage in each column?

A. At the price per cubic yard, yes.

Q. When you got down to the average cost per yard—44.8 cents—is that per cubic yard?

A. Yes, sir; that is right.

Q. How did you get that?

A. That is obtained by dividing the total charges against grading on the construction books by the total charges.

Q. And do you think that way results in a fair statement as to the average cost of grading?

A. Per yard of all kinds of material, I think it does.

Q. Now, between the cost of dirt at 19.3 and the average, 44.8, and the average contract price of 33.4, there was a difference between the average contract price and the average cost per yard of 11.4 per cent, was there not?

A. 11.4 cents.

Q. 11.4 cents?

A. Yes.

Q. Then you think that it is fair to take that 11.4 cents and add it to the 19.3 to show the average cost of earth?

A. Yes, I think it is.

Q. Then you think—of course, if that is true—that when you let a contract for earth at 19.3 cents, you are willing to state as an engineer that there is over 50 per cent of extras over your contract, is that correct?

A. I wouldn't call it extras.

Q. What would you call it then?

A. I would call it the increased price that you must pay per yard to cover the items of overhaul, of transportation of outfits, of men, of supplies, and of extra bills of every nature that go to make up grading, and are not paid for on a yardage basis.

Q. And you think that that amounts to 50 per cent more than the contract price?

Mr. Holden: You mean now just the contract for earth alone?

Mr. Teal: I am speaking of earth, yes.

Mr. Holden: Do you understand that there are any such contracts ever let by railroad men—just to excavate earth, without rock and other things?

Mr. Teal: What difference does it make what I understand? He can answer this question.

The Witness: What is the question?

(Question read.)

Q. On the earth part.

A. It does, when you take earth separately.

Q. Now on these contracts for grading, the extras, as I understand it, that the contractor does not pay for, or which are not covered by the contract directly and specifically, are for overhaul, for one thing, and for such work as he comes across in the doing of his grading, which is not to be done and is not covered by the contract?

A. Yes; as has to be done on what we call force account proposition.

Q. Force account proposition?

A. Yes, sir—as well as the transportation of grading outfits, men, supplies, powder, everything that the contractor requires, and which, under an ordinary contract the railroad company agrees to transport free.

Q. Now under the ordinary contract, where you let a contract for grading, the grade must be left ready for the ties for laying the rails, mustn't it? Isn't that the proposition?

A. Yes. Ordinarily that is the requirement.

Q. And then what comes after that is largely on force account and really goes into the maintenance afterwards—fixing and laying the track. He has nothing to do with that? That has nothing to do with the grading?

A. No, not as a rule.

Q. And so the contractor turns over to you, or should turn over to you, under the ordinary contract, a grade ready for the ties for laying the track?

A. Yes, that is what the grading contractor has to do.

Q. And you think that in ordinary construction of a railroad, building 8,000 miles of it, that the cost on the earth, other than that covered by the contract, would be 50 per cent of the contract price?

A. It shows so in this statement. Now, to make that perfectly plain, I would like to explain it to you.

Q. I wish you would, for I cannot understand this table.

A. I will make it perfectly plain. It is well agreed, I think, among all the engineers who have had to do with this cost of reproduction, that it is necessary to add something to the prices paid contractors to cover the overhaul, the transportation of men, supplies, powder and so forth, and the extra bills, or the work which is done by contractors on force account. It is necessary to add something to the flat prices paid for earth, hard pan, loose rock and solid rock. But there has been a very great difference of opinion as to how much should be added. Now, in order to arrive at that, I went through our books covering this 10 year period, and covering 46,903,481 cubic yards of material, and arrived at the average contract price for all that material, which is 33.4 cents; and the average price per yard of all of that material, after these additional charges were in—that is, the overhaul, transportation of men, supplies, powder and extra bills as paid contractors—would represent a difference of 11.4 cents, which would have to be added to the contract prices to cover the full cost of the work. Now, whether it is right to apply that equally to earth,

hard pan, loose rock and solid rock does not make very much difference, because the result will be the same if you apply less to earth and more to the others; you will get the same amount in dollars and cents. Now, if I have not made myself clear on that—

Q. You have made yourself perfectly clear. Now, in this 11 per cent extra, how did you figure the freight in that at this time?

Mr. Holden: 11 cents extra.

Q. 11 cents extra. How did you figure the freight in that at this time?

A. Those freight charges were just as they were shown in the construction books, and I think, as a rule, were tariff charges.

Q. Were tariff charges?

A. I think as a rule they were.

Q. Now, in connection with the tariff charges on the Great Northern Railroad: why did you make such a charge as that? Why should you charge that?

A. As the cost of reproduction? In arriving at the cost of reproduction?

Q. No, no. This came from your books, you testified.

A. Yes.

Q. As a matter of fact your contracts do not provide for any such thing. Your contracts provide for free transportation for these contractors?

A. Yes, sir.

Q. Now, you say you put it in on a basis of tariff charges. Do those charges appear on your books?

A. No, sir; these total charges appear from the construction books in the accounting department, and, as I say, my understanding is that the freight charges generally are tariff rates.

Q. Well, when were they put in? That is what I am getting at. When was that charged up to tariff rates?

A. At the time the charges were made on each line.

Q. Now, are you sure of that?

A. That is my understanding, Mr. Teal. The books were opened at the time the work was going on, and the charges were made at that time. That is my understanding of it.

Q. Now, let me ask you this: You let a contract for one of your branch lines out here, and you agree to deliver the men, generally speaking, don't you?

A. To the contractor?

Q. Yes, to the contractor.
A. Yes, sir.
Q. And you agree to deliver his material, don't you?
A. Yes, sir.
Q. And there is a great number of men who sieve out—work out through the sieve—before they get to work, don't they, as you have shown?
A. Oh, a great number.
Q. Then, for instance, there was one statement here you made—I think that you said you carried an average of 528 men, and there were 14,105 men sent to that job.
A. I want to be right on that. (Referring to paper.)
Q. That is right. I put it down at the time.
A. All right.
Q. Now, those men are carried on the regular trains that run out, are they not, ordinarily?
A. Ordinarily; yes, sir.
Q. That is the ordinary custom of the railroad?
A. Ordinarily.
Q. Do I understand you, that in the books of your company there appears charged up against these men passenger fares—these 14,000 men—to that point?
A. Whatever number was sent out, and wherever they were sent from.
Q. And that is the way that the cost of construction on the Great Northern is being shown by your books to-day, as you understand it?
A. I understand so; yes, sir—that the transportation of men and supplies and material for each piece of constructed line is charged for at a tariff rate; that is, it was up to a certain time. I am not sure but what there has been a change; but so far as this statement goes, up to the date it is made, that was substantially correct.
Q. Well, this is made July 1, 1908. That is good enough for me.
A. That is substantially correct.
Q. You certainly have not hired anybody to haul your rails out for you to your branches as you have extended them?
A. Some portion of the line; yes, sir.
Q. Well, only to a moderate extent, isn't that true?
A. Not any very large extent; no, sir.
Q. Now, does the hauling of those rails appear on your books as cost of construction at full tariff rates?
A. That is my understanding, Mr. Teal.

Q. Then, when you made up your statement in the Spokane case, and made up the cost of your rails, delivered out on your road, about $3.50 or $4.00 a ton less than you do in this case, how did you arrive at that?

A. I think we figured on a half a cent a ton a mile on that.

Q. But if they were carried on your books at the full tariff, why did you figure on any other?

A. That statement was not taken from the books. That statement for the Spokane hearing was made up, without consultation, of what had been done in the way of freight charges.

Q. Now, on handling your ties on your road, you charged full tariff rates—lumber rates.

A. For ties going to a new piece of construction?

Q. Yes, any direction. You have it all figured in here.

A. They are figured at tariff rates for ties.

Q. Well, how does the accounting department do?

A. I say they are figured at full tariff rates.

Q. Full tariff rates?

A. Yes.

Q. So that this constant cost is being added to by these tariff rates?

A. Why, the freight charges is one item which enters into the increased cost of the work.

Q. Can you give the court any idea how much more freight you figured in this case, on this cost of reproduction, than you did in the Spokane case?

A. No, I cannot.

Q. Many millions of dollars, though, isn't it?

A. It would certainly be a few millions of dollars.

Q. Now, if you were able to prepare a statement showing this cost of grading from 1898, and if your estimate of 82 per cent is based on actual quantities, and your estimate now is based on an average period, why did you not bring in exact figures for the 82 per cent, instead of estimates, and only an estimate on the 18?

A. You are speaking altogether of the grading now?

Q. I am speaking of this item—this large item—$95,000,000.

Mr. Holden: Do you mean why didn't he bring in the exact cost of the 82 per cent of the grading?

Mr. Teal: I say this: That the witness has testified that as to certain figures under the head of grading—which is earth, hard pan, loose rock and solid rock—amounting to between eighty five and ninety million dollars, he says that the

books of the company show exact quantities, and that they show what they paid contractors for the work; and you have used as a basis to arrive at a figure of cost an average running over a series of years, which is right, in my judgment. Now, what I want to know is why didn't you bring in what that cost, if you have the figures.

Mr. Holden: Did he say that he had the cost of the 82 per cent? He said he had the quantity.

The Witness: No, I didn't say I had the cost of those.

Mr. Teal: Excuse me, Mr. Holden. With all due deference, I would rather have the witness say what he said. I don't think I misunderstood him.

Mr. Holden: I do not propose to sit here and let you make statements of what the witness said that the record does not bear out. The witness did not say he had the cost of 82 per cent. On the contrary, he said that because of the ancient age of a good many other lines and the fact that they had been bought from companies that built them, he did not have any record except as to the quantity.

The Witness: Let me strighten that out.

Mr. Holden: Let the witness state the fact.

Mr. Teal: Let the witness state it, and don't you state it.

Mr. Holden: Well then, don't you state it; that is the point.

The Witness: I stated that we had 56 per cent of the total amount of our yardage from original estimates and vouchers, as paid contracts—56 per cent.

Q. That is what I understood.

A. I said, in addition to that that we had 26 per cent of the quantities on record. I did not say that we had the prices for that 26 per cent. That represents work done practically altogether by the railroad company, by work trains and steam shovels, and I did not state that we had the cost of that.

Q. Well, you have the 56 per cent, of what you paid contractors?

A. We have; yes, sir.

Q. I would like to ask you, how does that 56 per cent actually compare with your estimate?

A. I cannot tell you how it does, Mr. Teal.

Q. How do you know you got 56 per cent of it?

A. Because we took the amounts off of the estimates, or the vouchers,—the quantity of cubic yards.

Q. And you never looked at what you paid?

A. Oh, yes, we looked at what we paid; but that would be

rather a complicated process to see just how that compared with these.

Q. And you did not try to see how your estimate compared with the actual cost?

A. No; because when you get back ten years the prices prevailing then have very little bearing on what you have now.

Q. Well, but you have taken them into account in submitting this statement to the Court.

A. I went back ten years, and I think that was going back to the point where it showed favorably, as compared with the present prices.

Q. What do you say for the prices in late years. We will take them on earth. Have they been higher or lower than they were 10 years ago?

A. Please repeat that question.

Q. I say, do you know that within the last three or four years the prices for grading—I am speaking now of removing earth—have been higher or lower, in your judgment, than they were in 1898 or 1901?

A. I should say somewhat higher.

Q. Which do you say is higher—then or now?

A. They have been higher the last three years than they were say, 10 years ago.

Q. But whatever is on this statement is correct, isn't it?

A. Yes, sir.

Q. If this statement don't bear that out, then you are mistaken?

A. No, I am not; because prices go by classes of work and by line. You cannot compare one line with another. That is like saying one house cost the same as another house.

Q. But as to the 56 per cent of the work that I have referred to, or that you have actual figures as to the actual cost of, and that are subject to inspection—

A. Yes, sir.

Q. —as to that, you yourself don't know how it would compare with your figures?

A. No, sir; I do not.

Q. Now, while I am on that, I would like to ask you another question: In preparing any of these estimates—for instance on this grading, where it averages 44.8 per cubic yard —now, everything was included in that, wasn't it? It included all the extra work?

A. Yes, sir; overhaul, transportation of men—

Q. Any accidents?

A. Whatever the construction books showed as chargeable to grading during construction.

Q. Any accidents?

A. Why, certainly. Anything that would be chargeable to the grading. If an accident was chargeable to grading, it would be charged to grading.

Q. Do you carry insurance against accidents?

A. As a railway company, you mean?

Q. Yes.

A. No.

Q. So that would include everything?

A. Yes, sir.

Q. Now, when you took up the question of these bridges here—just going over that briefly (I am not going to ask you any technical question about it)—and the ties: That includes every element of cost, does it not?

A. Yes, sir.

Q. And when you come to frogs and switches, and ballast, you include all those elements of cost in there?

A. Yes, I tried to include every element of cost.

Q. Now, when you came to your station buildings, did you compare the costs of those buildings with your estimates?

A. Yes, sir.

Q. How did they come out?

A. Generally we were higher than the original cost.

Q. Higher than the original cost?

A. Yes.

Q. And the work all the way through here—the fuel stations and grain elevators and all that sort of thing—you did everything you fairly could do to include everything that would show the absolute cost of duplicating this road?

A. Yes, sir; I tried to make it as fair a statement as I could and include all that would belong to the—

Q. And this statement is above the cost, isn't it?

A. Above the original cost?

Q. Yes.

A. I can't say as to that; but it would be my judgment that it is.

Q. Now, that being true, why did you add $16,000,000 for contingencies? Haven't you, as an engineer, when you sit down here and figure out all these values and put them in before the court as the completed cost, covering accidents and everything—why do you add ten per cent to an estimate of this kind? What have you left out?

A. Because you have no means of knowing that you would

have the same conditions to contend with that you had before.

Q. But, my dear sir, you here now testified you actully covered everything, and covered them to such an extent that you have gone over the original cost, that you have covered accident, and covered every element that entered into it.

A. Covered every element that I considered was properly chargeable.

Q. Well, but it was taken from your books?

A. Yes.

Q. And your books do show everything that you put in them; why do you add ten per cent in a case of that kind?

A. Because you would have such things as floods and fires and strikes of all kinds, and accidents.

Q. But you have had them already, haven't you?

A. You have had some.

Mr. Holden: Just a minute. I am going to make an objection. It is very unfair for Mr. Teal to quote the record in the way he is. Mr. Hogeland testified that on the question of these buildings he took the plans and specifications of the larger items and the plans of the building of the smaller ones, and applied present prices to the material. He did not consider the fire that may have occurred on any one during the process of building, and he did not apply it to any of those unforeseen contingencies, because he did not take the cost off the books. If he had taken the cost of a building which had been damaged by fire during the process of erection, then he would have shown that contingency; but he took the plans and specifications and applied the present prices; and I don't know any prices that apply to fires or tornados, and he has not made any such statement in his testimony as Mr. Teal seems to think he has, if you will remember his testimony.

Mr. Teal: I think I remember it.

Mr. Holden: You don't seem to remember it accurately, because you are assuming that he has figured into the cost of building every elemnnt of expense that they did incur; and he has not done any such thing. He has taken the plans of that building and applied the present prices for the material. That is all he has done.

Mr. Teal: I am very glad counsel has made this objection, because it brings out clearly what I want brought out. He wants to get a double valuation of the things that do exist and things that don't exist.

Mr. Holden: I don't any such thing.

Mr. Teal: Excuse me; I will prove in a minute you do. All this witness is testifying to is to re-create the present Great Northern Railway Company as it stands to-day—not the buildings as they stand—I am not asking about those. I am talking about a depreciation of all he has used upon the very statements that he has furnished to this court. I say I am not misquoting the witness; because he has testified that these figures that he has given cover, so far as they could, every possible contingency upon the things that now exist. We have eliminated the things that don't exist, and I am talking about buildings burned by fire.

Mr. Holden: No; but you are talking about contingencies.

Mr. Teal: I am talking about contingencies on this thing he is testifying about.

Mr. Holden: I say it is not a fair statement of his testimony to say that in estimating the cost of the Great Northern general office building, that he figured any contingencies that the actual figures may have developed in building that building. He simply took the plans of that building, and the contractors' specifications and applied the prices for brick, and mortar and lumber, and things of that kind. That is as far as his testimony has gone.

Mr. Teal: I suppose it will be a question for the Court finally to decide as to what he testified.

Q. In this question of 10 per cent, it is not a fact, Mr. Hogeland that, ordinarily speaking, when there is a construction of a railroad to be made, and an estimate is desired, that you send out your surveyors, run your preliminary lines and then make up your estimates, and gradually get more and more complete, until finally you submit, as nearly as you can, a filed estimate, and to that filed estimate it is always customary to add a percentage for unforeseen difficulties?

A. Yes, practically always.

Q. Isn't that what you mean when you say it is true that contingencies must be provided for?

A. Yes, that is what it is necessary to do; and this is along the same line.

Q. Now, Mr. Hogeland, when I simply give you a mathematical proposition, and you have every element of cost, and in figuring it out you put in every element of cost, which includes, and must include, over so many miles of track, all the different hazards that occur, would you say that the same sort of a contingency exists as in the first case I mentioned?

A. Not to the same extent; no, sir.

Q. Have you figured in here the cost of the switch-back across the Cascade Mounutains?

A. The cost of the grading is in there, but no other cost.

Q. The cost of the switch-back was in the Spokane, wasn't it?

A. Only the grading.

Q. Is that not so?

A. No, sir.

Q. You have a tunnel there now, haven't you?

A. Have a tunnel there; yes, sir.

Q. Speaking of tunnels: Let me ask you something about them. Now, as I understand, the tunnel there at Seattle, 5141 lineal feet, double track tunnel—1/2 thereof—$937,700, represents if I understood you correctly (and if not, correct me) the absolute cost of that tunnel; is that true?

A. Yes; that represents the cost of the tunnel.

Q. That was the contract price of the tunnel?

A. It wasn't done by contract.

Q. Well, but it was the price that was paid?

A. Yes, that is what the work cost.

Mr. Holden: You mean that is one-half of it.

The Witness: Yes, one-half. I say it is based on that.

Q. That runs under the city of Seattle for pretty nearly a mile, doesn't it?

A. Yes, sir.

Q. Now, did that cost include the difficulties that you had with some of the buildings, the items you had to pay on that account? Were those charged to tunnels?

A. No; I think that was a separate charge. That was charged to land damages, is my recollection.

Q. Now, taking the Cascade tunnel, how is that built?

A. That was built by company forces.

Q. Have you the exact cost of that tunnel?

A. Yes, sir; we have.

Q. How much is it?

A. I can't tell you.

Q. It is more or less than this estimate?

A. It is less than this.

Q. How much less?

A. That would be simply a guess.

Q. Well, you can ascertain. Will you please bring that in to-morrow?

A. I can bring that; yes, sir.

Q. Now, we will take the Boulder Tunnel. How was that built?

A. That was originally built by contract, but afterwards lined partly by contract and partly by company forces. I do not think the original cost of that could be furnished; I do not believe it could.

Q. Now, where is the unlined single track tunnels? Those are tunnels out along the road?

A. Yes, those are at various places, aggregating 6980 feet. The same is true of the single track timber-lined tunnels.

Q. Would you say that the cost of those, as figured here, is more or less than the actual cost?

A. I should say it was very nearly the same.

Q. Now on this question of rails—while I am right close by there—why did you figure the cost of rails in the Spokane case at $36 and why do you figure them at $39.75 now in this case?

A. I think the difference is altogether in the freight.

Q. Altogether in the freight?

A. I think it is.

Q. The Steel Company sells rails on delivered prices, doesn't it?

A. Oh, there are other concerns you can buy rails from.

Q. They are sold on delivered prices, aren't they?

A. You can purchase them that way, or you can purchase them at the mill, either way.

Q. How does the price of Belgium rails compare with the rails in this country?

A. After you pay the duty, you mean?

Q. Yes.

A. The price, I think, is somewhat higher.

Q. I say, add the duty to the price of Belgium, how much difference does it make?

A. I cannot tell you; but it is a little higher.

Q. Did you ever figure this out? I would like to ask you this because of your statement about paying the tariff on these rails to the Pacific coast—what is the tariff?

A. I think $10.

Q. $10 a ton to the Pacific coast?

A. I think so.

Q. If you really pay the tariff rate on rails to the Pacific coast, which do you think would be cheaper—Belgium rails on the Pacific coast or American rails plus the entire freight rate?

A. I don't think there would be much difference. It may be that the Belgium rails, or foreign rails, would be a little cheaper—that would be on direct coast points.

Q. Now if you were paying that sort of a rate on rails to the Pacific coast, what do you think the sea rate would be on rails from our own country?

A. I could not testify as to that.

Q. Well, do you think the water rate is higher or lower than the rail rate?

A. It is lower, in my judgment.

Q. And if you were building a railroad in the way you are going to build this, do you think you would take your coast rails by the cheapest freight rate or by the highest?

A. Oh, I would take them the most reasonable way I could.

Q. So that really, after all is said and done, Mr. Hogeland, so far as the freight is concerned, you simply have used arbitrarily—I don't mean it offensively—whatever the tariff rate might be on rails from points to points throughout the system, in figuring the cost?

A. Yes; we have, as I explained in my direct testimony, to take the center of gravity of the system and apply the freight rate which would apply to that point.

Q. And the same is true as to all other material that has gone into the road?

A. Yes, sir.

Q. Under this theory of construction?

A. Yes, sir.

Q. Now, there is quite a large element of cost, from the standpoint of terminals, also in your estimate, is there not?

A. Yes, very large.

Q. You are familiar with the situation out at Seattle?

A. Yes, sir.

Q. How many acres of terminals have you got there, do you know?

A. I don't.

Q. Do you know how much is in use?

A. Not all of it in use.

Q. And is Seattle the only place where all of your terminals are not in use?

A. No; I think there are other places where part of the terminals are not in use. It is a very wise provision, too.

Q. Oh, I think so. But I am not speaking of its wisdom; I am simply speaking as a matter of fact. The cost of those terminals, whether used or not, is in this estimate?

A. Yes, sir; that is my understanding. Now, recollect that I did not make the valuation of the right of way, so that I am simply giving you my—I may be wrong—

Q. And so far as you are concerned, interest is figured on that, isn't it?

A. Interest is figured on the entire—

Q. Cost of the terimnals?

A. The entire cost shown in the statement.

Q. Well, but I mean the terminals are in that, are they not?

A. Yes.

Mr. Holden: Well, isn't it the better way, to refer to Mr. Heydon's testimony?

Mr. Teal: No, it isn't. It is right here in his own 87,000,000.

Mr. Holden: I know; but he has taken that, as he has explained from the real estate estimate.

The Witness: It is in that item there, yes, that is right. I cannot tell you just what Mr. Heydon included, of course, in his—

Q. Would you, from an engineering standpoint, consider it a wise plan to invest $87,000,000 in the terminals before the road was built, and pay interest on it, to secure all your terminals that you had?

A. Terminals don't cost $87,000,000.

Q. Well, right of way, stations, and terminal grounds—the whole thing together.

A. Terminal is only a part of it. The entire right of way—you certainly have to purchase your right of way before you can build a railroad.

Q. Would you have your right of way purchased, so that this interest charge would be running against it, as you figure it, all the time?

A. No, sir; I would make that in the most economical way I could. But you would probably have to go in and buy part of your right of way early, if you wanted to get it at any kind of a price.

Q. But you would acquire it from time to time?

A. I think I would.

Q. And probably, to that exent, you interest charge is a little high, isn't it?

A. I don't think so. I have taken it for four years, and that would contemplate the purchases pretty equally during the entire eight year period.

(An adjournment was here taken until the morning of Tuesday, April 27th, 1909, at 10:00 o'clock.)

Room 326 Federal Building, St. Paul, Minn.
Tuesday, April 27th, 1909, 10:00 o'clock a. m.

Proceedings were resumed before Special Master Frederick Dickson, at the above time and place.

Present:

On behalf of the Complainants, Mr. Hale Holden and Mr. Charles Donnelly.

On behalf of the Defendant, Mr. Luther M. Walter and J. N. Teal.

ALBERT H. HOGELAND, recalled on behalf of the complainants, his cross-examination was resumed as follows:

By Mr. Teal:

Q. Now, Mr. Hogeland, on page 9 of your exhibit, under the heading of "Grading," you give the cubic yards of the different material moved, and your clearing and grubbing, et cetera. Now, what does that represent—or, to ask a direct question, does that represent the amount of clearing, grading, et cetera, that has been done on all the lines of the Great Northern—main line and branches—since it was commenced to be built?

A. Yes, sir; that is intended to do that.

Q. To cover everything that is shown by the books, or by your measurements and estimates?

A. There would be a number of abandoned lines that are not shown.

Q. That is what I wanted to make out. You have no abandoned lines in there at all?

A. We have some stretches of abandoned lines in this grading statement.

Q. Can you tell me how many abandoned lines you have?

A. Such lines as it appeared necessary to build, in the way that the line was originally built, in order to work out the most economical method of reproduction, the grading for those lines was included.

Q. Can you give us some estimate of how much there is of that, in dollars and cents?

A. I can give you the yardage, and can give you the dollars and cents.

Q. Let us have the yardage, if you please.

A. For the entire system it amounts to 6,195,900 cubic yards.

Q. Of what?

A. Of grading. It is not separated, according to the classification.

Q. Does that apply also to clearing and grubbing?

A. Yes, sir; for those same lines.

Q. Now, in a number of places on the Great Northern you have re-located, haven't you; that is, abandoned your first—

A. Changed the location.

Q. Where you changed your location, what did you do about the original line, so far as these figures are concerned?

A. That would be one of the sets of the abandoned lines that I mentioned, where a line has been re-located. I desire to say that this does not, by any means, include all of the abandoned lines; but we attempted to make a separation on the basis of including the lines which I figured would be more economical to reconstruct in that way, first building the comparatively light temporary line, and afterwards carrying out the more heavily completed line. Now, that would be particularly illustrated at the switch back—Cascade tunnel—where I figured it would be impractical to attempt to build the tunnel first, necessarily, to carry out economical construction we would build the switch back first, the same as originally built, and the quantities of grading, clearing and grubbing for the switch back appear in this statement. That illustrates the method that we have pursued in including any line which may have been abandoned.

Q. Did you have a switch back over the Rockies at any time?

A. No, sir.

Q. You drove the tunnel right through that?

A. There is no tunnel on our line—I am speaking now of the main line.

Q. The Northern Pacific had a switch back over the Rockies, hadn't it?

A. I think not over the Rockies; they had over the Belt Range.

Q. Well, it doesn't matter. Now, under this head of "Grading," I notice "Crib Work, $765,000." I believe you testified that that was done along at different times and is an estimate?

A. Yes, sir.

Q. That was not in your Spokane estimate at all?

A. No, sir; it was omitted from the Spokane estimate; that is one of the things that was overlooked.

Q. Now, you stated yesterday that you would get the actual cost of the Cascade tunnel?

A. Yes, sir; I think I have that.

Q. All I care for is total figures.

Mr. Holden: Do you want this to go in as an exhibit?

Mr. Teal: No, I just want the figures.

Mr. Holden: Instead of having it as an exhibit, you might just read it.

Mr. Teal: I don't want a thousand things to print in here.

Q. State the actual cost, please.

A. The actual cost, $2,532,188.08.

Q. That is about $150,000, thereabouts, less than the estimate as given to now reconstruct?

A. Yes, it is a little more than that; because you will notice it includes engineering and superintendence and tracks.

Q. Oh, yes.

A. I have given this to you just as it appears on the books.

Q. Now, just tell us how much more your estimate is, submitted here, than the actual cost?

A. I will have to do a little subtracting.

Q. Yes, that is all right.

A. I made it $264,000.

Q. Now, please state the items that you take out.

A. Take out item 1 "Engineering and Superintendence."

Q. Just state the amount, leaving off the odd cents.

A. $59,791. Take out the item "Right of Way, $8.70"; take out the item "General Expenses, 13 cents"; take the item "Tracks, $42,782.99,"—making a total deduction of $102,583.

Q. Now, then, you think that is all the deductions that should be made from that to agree with your estimate here?

A. Yes, sir; I think so.

Q. Now, let us take the question of the hospital charges—$16,593.35.

A. That, I think, is a necessary charge against the work.

Q. Is that in the 10 per cent. for contingencies which you testified about yesterday?

A. I don't know that you would regard it as in there.

Q. You wouldn't consider that in there. Now, taking the "Personal Injuries, $28,000," is that covered by your contingent 10 per cent.?

A. I don't think you can pick out just what "Contingencies" in a case of this kind would cover.

Q. You don't pretend to pick that out when you put in the 10 per cent., do you? It is just the general charge to cover whatever may arise, isn't that correct?

A. Yes, sir; to cover all increase in the cost of the work over and above what can be foreseen.

Q. Yes; but you said yesterday that it was "Damages," "injuries to men," and everything of that kind.

A. That would probably be part of it.

Q. Now, we will take the machinery, $229,000. Is that machinery charged in there a total loss after it has done its work?

A. No; but this is made up, allowing credit for machinery that may be recovered. This is a net charge to machinery.

Q. These buildings for $45,725: Are there none of those buildings left there at the tunnel?

A. No, sir; none remaining.

Q. Now, tools $139,000: Do you enter into this general estimate of yours in any other place—part of this eight millions charge of tools on hand?

A. No, sir; not at all. They are altogether tools that were used at the tunnel.

Q. Taking everything of that kind into consideration, and leaving in the "Personal Injuries," the "Hospital" charges, and all other items excepting those which I have mentioned, the cost of this tunnel, as shown by your estimate, is how much greater than the actual cost, did you say?

A. About 264,000.

Q. And you still think that ten per cent. should be added to that amount to cover the contingencies in the case of this tunnel?

A. I think so; yes, sir.

Q. And you think that would be a fair estimate and a fair way to estimate it?

A. I certainly would not want to take the contract to build it, unless I did something of that kind.

Mr. Teal: I think I will introduce this statement in evidence, and have it marked "Defendant's Exhibit 2 (Hogeland."

(Said paper was so marked.)

DEFENDANT'S EXHIBIT 2 (HOGELAND).

GREAT NORTHERN RAILWAY.

STATEMENT SHOWING CHARGES TO CONSTRUCTION.

CASCADE TUNNEL.

Engineering & Superintendence	$ 59,791.92
Labor	826,418.61
Explosives	102,722.06
Power	310,915.26
Tools	139,208.11
Buildings	45,725.74
Timber Lining	129,133.53
Masonry Lining	600,821.28
Machinery	229,114.19
Personal Injury	28,743.94
Telephone Line	138.27
Hospital	16,593.35
Right of Way	8.70
General Expenses	.13
Tracks	42,782.99
	$2,532,118.08

Q. Now, upon the question of ties—turn to page 10, please, and to your Exhibit 17. You figure your ties at 82 cents, do you not—track ties?

A. Yes, sir.

Q. Something over 23 million. Now, if I understand your Exhibit 17 correctly, you have three scales of prices. An average tie costs, from 1898 to 1907, 66.6 cents; from 1905 to 1907, 76.3 cents?

A. Yes, sir.

Q. 1907, 82 cents.

A. Yes, sir.

Q. Now, this exhibit that you are submitting to the court is made as of June 30, 1908?

A. Yes, sir.

Q. And in making your estimates on these buildings and other features of construction you have taken 1908 prices, I understand?

A. Yes, sir.

Q. In "ties" you did not take 1908 prices?

A. No; I did not consider it was fair to confine ourselves to 1908 prices for ties. The—

Q. Now, then—well, you can go on and explain, if there is something you want to explain.

A. The only explanation I have is that tie timber, so far as the eastern portion of the line is concerned, at least, is rapidly becoming exhausted, and it is fair to assume in any reproduction estimate that you could not get ties to reproduce the entire system at the prices prevailing in 1908.

Q. Then, instead of taking the actual prices, you took the high prices of 1907—that is correct, isn't it—that prevailed in 1907?

A. I don't think you can say the high prices in 1907.

Q. That was the year of the high prices in lumber?

A. I have every reason to believe that the price of ties is going to increase.

Q. And the price of your steel might increase, too, might it not? And the price of your right of way might increase, might it not?

A. Yes; but that is not so clear a case as "ties."

Q. Now, in the column headed "Charges"—will you please explain what you mean under the head of charges?

A. That means the charges against ties as the same appear on the construction books for each one of these lines, and would cover the cost of the ties as they were delivered either along the right of way or on cars, the cost of any peeling, loading, transporting ties to the material yards for each piece of construction.

Q. And at what rate were the transportation charges figured?

A. I think generally at tariff rates.

Q. So that your books, when these particular items will be checked up, will show these charges, as they appear here, as introduced in evidence?

A. Yes, sir.

Q. On the accounting books of the company?

A. Yes, sir.

Q. Now, in this same case, in connection with the testimony given by Mr. Darling, as chief engineer of the Northern Pacific, he figured ties at 55 cents. How do you account for that difference between your judgment and his as to the value of ties?

A. I think that must have been without any transportation charges. I did not hear his testimony, but it would appear—

Q. Well, we will get down to it. He testified—

Mr. Holden: What page are you on?

Mr. Teal: 211.

Q. I called his attention to the fact that he was figuring

his ties at 55 cents, and I asked him then what he figured a fir tie cost on the Pacific coast at this time—that would be the time he was figuring, April 12th. His figures were, I think, a fir tie would cost at the mills about 35 cents—38 cents at present prices. "What did you figure it at in here? I figured the general average 55 cents. I think fir ties we figured about 44 or 45 cents." Now, don't you know that as a matter of fact, in the fall of 1907 after the panic and the condition that existed in lumber rates, that there was a tremendous drop in the price of lumber all over this country?

A. I know there was quite a drop in the price of lumber in the latter part of 1907.

Q. And that it continued, and has continued all through 1908?

A. Not to the same extent that it did the latter part of 1907.

Q. And to such an extent that the mills in the south—I was going to say by the thousands—many, many hundreds closed down?

A. I think it is true that the mills did close down, not only in the south, but in the west.

Q. Now, you still think that in arriving at the price of the tie, it is right, where you are using 1908 figures in other instances, to use the prices of 1907 for ties?

A. Yes, sir; in making the statement of the cost of reproduction, I believe that is right.

Q. Now, taking the Northern Pacific price of 55 cents, and yours of 82, it makes a difference of 27 cents for ties.

A. I think you are wrong, Mr. Teal, in saying that the Northern Pacific used 55 cents. If you will turn to Mr. Darling's exhibit giving the cost of reproduction, I do not think you will find he used 55 cents.

Q. Well, in order to save time—if he did use 55 cents, it did make 27 cents a tie difference, of course?

A. That is a matter of subtraction.

Q. And also a matter of examination to see whether his exhibit shows it. Did you go over Mr. Darling's figures and he over yours?

A. No, sir; but I have seen the figures.

Q. Did you ever consult with him in getting up these figures?

A. Yes, sir; many times.

Q. Did you agree upon the figures you were going to submit?

A. No, we had a good many differences of opinion. I think our exhibits will show that.

Q. But you did consult together?

A. Certainly we did.

Q. What did you think Mr. Darling did use for ties?

Mr. Holden: Do you mean what his exhibit shows?

Mr. Teal: Yes.

A. I think he used 80 cents. I think he did.

Q. Irrespective, then, of Mr. Darling,—because I don't want to get anything in the record that don't belong in there—irrespective of Mr. Darling, and cutting that out, the price of ties in 1908 did fall very much, did it not?

A. I think not. Our prices showed that the prices of ties in 1908 were practically the same as they were in 1907.

Q. And that is true also of 1909?

A. Well, we have not gone far enough in 1909 to be able to say.

Q. Now, in your "Interlocking and Other Signal Apparatus"—I did not quite understand what you said about that that was the actual as to quantity.

A. Well, I meant by that that we took actual interlocking plants and signal apparatus and applied the prices prevailing at that time, in order to arrive at the cost of reproduction.

Q. Do your books show what the interlocking apparatus actually cost?

A. No, I think not, in every instance. They do in many instances.

Q. What would you say your estimate is—higher or lower than the actual cost in this instance?

A. I think it is very close to the actual cost.

Q. Now, your grain elevators on page 18: Take at Superior—a steel elevator. When was that built—$1,536,000?

A. I think about 10 years ago.

Q. Is that greater or less than the actual cost of that?

A. I do not think that differs much from the actual cost.

Q. In your Exhibit 18, in the cost of ballasting, the transportation charges, I was interested somewhat in noticing how they varied. For instance, in 1904, I don't know whether that is fifteen cents per yard transportation. Is it?

A. Yes, sir; it is Columbia Falls to Rexford.

Q. Some long haul, was it?

A. That is in Central Montana—a pretty long haul—and was at a time when labor conditions were about as bad as they have been, requiring very many more men to be sent there than were employed on the work.

Q. So that these charges for transportation include not only the actual handling of the material, but sending men forward to do the work from time to time?

A. Sending them from any point where the laborers were picked up, to the work; yes, sir.

Q. And at the regular transportation rates?

A. That is my understanding.

Q. Now, I did want to ask you about one thing on page 10, about "Bridges, Trestles and Culverts." There is a stone arch at Minneapolis, $867,000.

A. Yes, sir.

Q. Actual cost?

A. No, sir.

Q. More or less than actual cost?

A. It is more.

Q. How much?

A. About $217,000.

Q. Now, your steel bridges with masonry, $7,547,195. Is that actual cost?

A. No, sir; not necessarily.

Q. Is there any reason why the actual cost of your steel bridges could not be given?

A. It certainly could not be given for all. It could be given for a very large quantity.

Q. How does that price compare with actual cost?

A. I think that is somewhat higher. I can't tell you how much.

Q. Proportionately the same as the stone arch?

A. No, I think not. I am not sure. The stone arch was built in the early eighties at the time when labor was worth almost half what it is to-day. That is the reason for the large increase in reproduction cost.

Q. Did you ever have any occasion to figure, or did anyone connected with the Great Northern Railroad ever ask you to estimate or to give them the original cost of construction of their road?

A. No, I don't recall that having been asked for.

Q. Did you ever have any occasion to figure it yourself?

A. The entire system? No, I have not. I think that I would be able to do it in any way.

Q. Have you ever figured up part of it?

A. No, sir; I have not; except we may have taken detached lines. That would be the only instance that I know of where that has been done.

Q. Would you suppose the basis of capitalization of the Great Northern would have any relation to its original cost?

Mr. Holden: Now, Mr. Teal objected yesterday to my going into matters with Mr. Hogeland other than engineering, and it seems to me the same objection would lie here.

The Master: Well, I suppose this would have some bearing on the value, wouldn't it?

Mr. Teal: If he knows. I am not going to follow it up, if he don't know.

The Witness: Well, I don't know.

Q. Now, since you have been with the company, have there been any additional branch lines acquired, that the Great Northern purchased?

A. Yes, sir.

Q. Now, before they were purchased, would you, or anyone under you, make any estimate as to their physical value?

A. I don't recall any instance where that was done.

Q. Did you make any estimate of their cost of reproduction?

A. No. I don't recall having done that in any instance.

Q. Nor anybody in your office under you, at all?

A. I don't recall of that having been done.

Q. Then, in purchasing these lines, the cost of construction, or the cost of reproduction would not enter into their value, would it?

A. I think it would; yes, sir.

Q. You say you don't know of a single instance where it was done?

A. But that does not change my opinion that I believe that that does enter into the valuation.

Q. There was a valuation of the properties of your road in Wisconsin a year or two ago, or a short time ago, wasn't there?

A. Yes, sir; there was; for the Wisconsin Railway Commission.

Q. Are you familiar with their valuation—in round numbers?

A. No, I am not.

Q. You don't know how the valuation made by the state on the Wisconsin property of the Great Northern System compares with your valuation on the same property?

A. I do not.

Q. In some of your estimates here, you have something about rental equipment, haven't you?

A. No, sir; we have cut that out in every instance wherever we knew it.

Q. What did I understand you to say took the place of rental equipment to the contractors?

A. Please state that question again.

Q. What did I understand you to testify took the place of the item of rental of equipment to contractors where you furnished it to them?

A. I don't know of instances where we have rented equipment to contractors.

Q. Don't you furnish equipment to contractors—track laying or anything of that kind?

A. It is not charged to them. The Railway Company furnishes the equipment and pays the bills.

Q. Now, you have made a charge for that in your estimates, haven't you?

A. Under train service. But there is nothing in that, so far as I know, for the rental charges for the equipment.

Q. What sort of a charge did the company make to itself for that, in your estimate?

A. I don't think it is in there.

Q. Yes; but you say that the company did furnish it, and under the head of "Train Service" you did make an estimate?

A. Well, the books show the cost of wages, fuel, oil, waste, all supplies furnished for the use of equipment, repairs for equipment; but the charges for rental of so much per day for an engine, or so much per day for cars, have been cut out, because, as I explained to you, I thought that would be a duplication, considering that we charged interest for 2 years on equipment; but I do not think it is right to charge both interest and a rental charge.

Q. Then in none of these items going to make up the cost, for instance, of grading or track laying, or anything of that kind, there is no item, other than this interest charge, covering the use of the cars, locomotives, et cetera?

A. Nothing that would correspond to a rental of equipment.

Q. That is what I mean.

A. Not that I know of.

Q. I notice a charge in here to the North Bank road—I guess you call it—no you call it the Spokane, Portland & Seattle Railway—the interest in that $21,827,521. Can you tell what that covers?

A. It covers money advanced for the construction of the

Spokane, Portland & Seattle by the Great Northern—Northern Pacific, up to the date of this estimate, June 30, 1908.

Q. Does that include the purchase of the Astoria & Columbia Railroad?

A. I can't tell you whether it does or not; I presume it does.

Q. And of the Lyle road, also, doesn't it?

A. I presume it would apply to that. It represents, as I stated, the money that has been advaced; and undoubtedly whatever purchases had been made would go towards that.

Q. And also the cost of so much of the constructed road, beyond Pasco, towards Spokane, as had been done up to June 30, 1908?

A. I think all the bills—

Q. In other words, all bills of every kind that had been expended by that road, since its organization, up to that time?

A. I should suppose so; yes sir. Of course, I would have no means of knowing how the money was applied; but it represents, as I said, the money advanced to that road.

Q. Are you familiar with the work done on the Columbia and the North Bank?

A. Yes, sir; somewhat. I have been over it a number of times.

Q. Do you remember what the estimated cost per mile of road of that was?

A. No, sir; I can't tell you. I know it has exceeded very largely the estimated cost.

Q. Well, it has cost in the neighborhood of $100,000 a mile, hasn't it?

A. I understand so; yes, sir.

Q. And it is an extremely well built road, isn't it?

A. Yes, sir; a well built road.

Q. Heavy work, isn't it?

A. Yes, sir.

Q. Lots of rock work, isn't there?

A. There is a great deal of unfinished work there.

Q. There is lots of rock work also?

A. Yes, sir.

Q. And a very low grade?

A. Yes, sir.

Q. In fact, it would be called a first class main line grade, wouldn't it, and road, in any country?

A. Yes, sir.

Q. Taking its grade and slopes, do you know whether it was made for double track or single track?

A. For a very short distance it was made for a double track.

Q. And how about the tunnels?

A. My recollection is there is no double track tunnel.

Q. And the culverts are nearly all concrete; in fact, all are concrete, aren't they?

A. No, not all. There are a number of them concrete.

Q. A great many concrete?

A. A great many concrete culverts.

Q. And what is the weight of the rails on that road?

A. 85 pounds, as a rule.

Q. Now, in connection with the building of that road, from Lelas clear west, it is a fact that you are constantly harassed either by the Harriman system, or its agents, in securing right of way?

A. There was a good deal of trouble down there in securing the right of way.

Q. And it made it more than usually expensive—that feature of it—didn't it?

A. That would add to it; yes, sir.

Q. And when that road was built there were materials brought up the river, were there not, and the building was going on at different places at the same time?

A. Yes. The entire piece of work was under construction.

Q. Under construction at the same time?

A. Yes.

Q. And of course the materials in that case altogether had to be hauled or transported?

A. What materials have you reference to?

Q. Well, I refer to cement, to powder, to men, to equipment for the contractors—the very materials that you have been testifying to as having gone into the construction of a road?

A. All of the supplies and outfit for grading contractors were pretty largely brought in that way.

Q. And the road was rushed night and day, wherever it could be, was it not?

A. Oh, there was some night work done; yes, sir.

Q. Don't you know that all along on the North Bank there, the contractors worked at night wherever they possibly could?

A. They did a great deal of night work; yes, sir.

Q. And that was built during 1906, 1907 and 1908, along in there wasn't it?

A. Yes, sir.

Q. At the time that labor and material prices were at the highest, isn't that correct?

A. Yes, sir.

Q. And that has cost about $100,000 a mile?

A. That is my understanding about that. That doesn't include equipment, you understand.

Q. Oh, no, I am not including equipment.

A. And I should add to that, too, as I told you before, there is a great deal of unfinished work there.

Q. A great deal?

A. Yes, sir; a great deal.

Q. What is the character of the unfinished work, and how much is there of it?

A. I had more particular reference to the high wooden bridges that are to be filled in. That is the particular thing that I have reference to.

Q. That is the only thing you have reference to, isn't it—the trestles?

A. No; there are many permanent culverts to be put in; many permanent steel bridges to be put in.

Q. A great many?

A. A number.

Q. You said "many." What do you mean by "many" on that road, culverts and many steel bridges—culverts and many steel bridges—I really would like to know, because I thought I knew that road.

A. There are a great many culverts yet to be put in.

Q. How many steel bridges?

A. I suppose there are about 10 steel bridges yet to put in.

Q. Now in your testimony in the Spokane case, how much did your figures show the cost per mile of main track was on the Great Northern System—the entire system?

A. $62.511.

Q. How much do your present figures show the cost per mile of main track on this system?

A. It shows $75,360 per mile, omitting items 36, 37, 38 and 39, and it shows $81,250 per mile including those items.

Q. The increase then, omitting this road that we have been talking about—that is, this Spokane, Portland & Seattle, and spurs and lines under construction, and interest in terminal railways, is about 75,000?

A. Yes, sir.

Q. An increase of about $13,000 a mile?

A. Something like that.

Q. Did your system construct any single track roads in 1908?

A. Yes, sir.

Q. What roads?

A. The Billings and Northern is the one that I had in mind.

Q. The Billings and Northern?

A. Yes; also built from Fernie to Michel in British Columbia.

Q. Excuse me—which one are you reading from?

A. I am not reading from any now. I am trying to tell you—

Q. I know; but what are you looking at? Exhibit 19, isn't it?

A. It isn't on there.

Q. Oh, it isn't on there.

A. Except in Exhibit 16, the Billings and Northern is mentioned, which was under construction for three years and completed in 1908.

Q. About how many miles is that?

A. 194.14 miles of new line.

Q. Is that a mountain road?

A. Partly so.

Q. Would you call that a fairly representative piece of track of the Great Northern System, as to cost?

A. Yes, of original cost.

Q. Perhaps I was misunderstood. I am speaking now simply of the physical characteristics of the country. Would you consider that as fairly representative of the country through which the Great Northern runs, so that it would be a fair representative of the average mileage of the system?

A. It would come reasonably close to it.

Q. In building that road, you, of course, made estimates of costs?

A. Yes, sir.

Q. And now it is completed, and you know what it cost?

A. Practically so; yes, sir.

Q. How much did that cost per mile?

A. I cannot tell you without examination of our records.

Mr. Teal: Then I would ask that the witness be requested to submit a statement showing his original estimate of detail of the Billings and Northern and the actual cost.

The Witness: Yes, sir; we can do that.

Q. And in showing the actual cost I would like to have

the station buildings and matters of that kind segregated, so that it will simply show whatever the facts are.

A. Yes, sir.

Q. Of course, I don't know what the facts are and don't care. Now, what other roads did you build during this time?

A. We built from Fernie to Michel in British Columbia, a distance of about 24 miles. We also built—

Q. Excuse me. Let us take that one. Fernie to Michel is a single track road, isn't it?

A. Yes, sir.

Q. That is a mountainous country, is it not?

A. No, it is in the valley of the Elk River, a valley line.

Q. Now, the same conditions apply to that road as to the Billings and Northern. That is, you prepared an estimate and it has been built and paid for?

A. Yes, sir.

Q. I would like to have the same facts respecting that work.

A. All right; I think I can furnish it.

Q. Now, what other road did you build? I am simply trying to get some general information?

A. Yes, I understand.

Q. So that we can see what it is.

A. We built about forty miles of new line in the neighborhood of New Westminster, British Columbia.

Q. Single track?

A. Single track.

Q. And what character of building was that?

A. Well, you wouldn't call it at all mountainous, but the same character as the country adjacent to Everett, Seattle —heavily timbered country.

Q. I would like to have the same facts respecting that road.

A. That road has only recently been completed, and I doubt if the charges are all in; but I think we can get the information about the way you want it. The charges, though, I feel very sure, are not complete.

Q. Now, would you say that those three pieces—take those as an average—would be fairly representative of the Great Northern system?

A. You mean as an entire cost—as an average cost of the whole thing, do you mean?

Q. I mean now by building the railroad. Of course I am

not speaking of these terminals around here. I am speaking of the country that it goes through.

A. No, I don't think they would cover enough mountain work. The Billings and Northern is the only line that approaches mountain work. I don't think they would fairly represent an average of the system.

Q. Now, taking from Duluth, here, until you reach the Rocky Mountains—across Minnesota, North Dakota and Montana, what mountain work have you in there?

A. All of the Rockies and the Cascades.

Q. I say, until you reach the Rocky mountains in Montana, what mountain work have you from Duluth?

A. There is no mountain work in that section.

Q. There is a good deal of scraper work, isn't there?

A. Yes, sir; quite a little.

Q. Now, that is a very considerable portion of your mileage, isn't it?

A. Yes, sir; quite a proportion.

Q. Then after you cross the Rocky Mountains, and work around through the Coeur d' Alenes and up in there, and get out in Spokane, then you run across the State of Washington till you strike the Cascade Mountains before you strike any more mountains, isn't that correct?

A. Yes, sir; that is true.

Q. Then you cross the Cascade, and after you cross the Cascades, you go right down the Sound country, don't you?

A. Yes, sir.

Q. On a water level. Now, these lines of yours through Minnesota, South Dakota, North Dakota on up to Manitoba, where all these red lines appear—there is no mountain building in there, is there?

A. No mountain building; but the construction through Minnesota is far from light construction.

Q. But it is not mountain construction?

A. Not mountain country; no, sir.

Q. You understand what I mean, and I understand what you mean.

A. I understand, yes.

Q. Now, during 1908, were any roads built in this section —I am speaking of North Dakota or South Dakota?

A. No, sir.

Q. Or Minnesota?

A. No, sir.

Q. Now, have you a road here from Marcus to Nelson. Did your company build that road?

A. No, sir; that was purchased.

Q. Now, from Butte, through Helena, up to Great Falls—that road was built, wasn't it, for the company?

A. Built under an entirely separate organization—the Montana Central.

Q. But that is a constituent?

A. It is now; yes, sir.

Q. And that went through a mountainous country, didn't it?

A. Yes, from Helena to Butte.

Q. Practically all mountain, isn't it?

A. It is mountain country; yes, sir.

Q. Now, your books will show the exact cost of that road?

A. I think not; it having been built by another corporation, I don't think our books will show it.

Q. Wouldn't the books of that corporation show it?

A. They may.

Q. And hasn't that always been a constituent part of the Great Northern system—the Montana Central?

A. Well, I can't say as to that. The entire work was handled from Helena for a great many years.

Q. Well, I simply was trying to get some fair piece of road. If you haven't got it, you haven't got it. You are acquainted, to some extent, with the Canadian Pacific Railroad, aren't you?

A. Yes, with certain portions of it. I have not been over the entire system.

Q. Generally speaking, you know the character of construction on the Central Pacific in British Columbia, West, that runs all through the Rocky mountains there. It is a very mountainous road, isn't it?

A. Yes, sir.

Q. And quite a long ways from the coast? That is a fact, isn't it?

A. Well, I didn't understand your question.

Q. I say that the mountains extend quite a long ways from the coast, coming out from Vancouver?

A. Extend quite a long ways from the coast? I don't know what you mean by that.

Q. I mean the mileage from Vancouver, before you run out of the mountains, going East, is quite extensive, isn't it?

A. Yes. They follow the Fraser River for some distance before they get to the mountains.

Q. Any engineer would say they ran through a mountainous country there, wouldn't he—I mean until you get out.

A. I want to understand you fully. I have never made an entire trip over the Canadian Pacific. I know in a general way what the character of the line is.

Q. Are your familiar enough with the character of that line to state how it compares with the Great Northern?

A. No, I am not familiar enough with it to say.

Q. Are you familiar enough with it to state whether or not on its Western end it has higher grades, more grades and more mountainous country than the Great Northern has?

A. What do you mean by the Western end?

Q. Through the Fraser, through the Selkirks—isn't that what they call them—the Western end of the Canadian Pacific—the whole western end?

A. Do you mean the entire Western stretch, Mr. Teal?

Q. Yes, the entire mountain stretch?

A. No, they haven't the amount of mountains we have. Now, I am giving you that from my general opinion, not having made a trip over the line.

Q. Well, you would hardly be qualified, would you?

A. I tried to tell you I wasn't. You seem to want me to qualify.

Q. Well, I wanted you to if you could, because if you did know you would know it. That is all.

By Mr. Walter:

Q. Mr. Hogeland, isn't it true that when these men are transported out to these various works, that the cost of their transportation is taken from their wages?

A. No, sir. Most of them haven't anything, to begin with, and they certainly wouldn't go out with a proposition of that kind.

Q. Do not a good many of them have to repay the cost of their transportation where they stay quite a while?

A. No, sir; I don't know of an instance where that is done.

Q. In a good many of these roads that go to make up the Great Northern system, construction was performed by subsidiary companies—construction companies?

A. I don't think you would call them construction companies. It was carried out under a separate organization.

Q. In those organizations, were not large stockholders or owners of Great Northern stock interested?

A. I couldn't tell you about that. I have no means of knowing how the funds for construction were secured.

Q. Have no knowledge of that?

A. No, sir.

Q. How long ago did you commence the preparation of the reproduced cost of this line?

A. Began in 1906.

Q. Now, commencing with the first item: Does that represent the work of your office?

A. I don't quite understand.

Q. The first item on your exhibit 15—"Engineering," $10,000,000. Does that represent the work of your office—the preparation of those figures?

A. Yes, sir.

Q. Item 2 does not in any wise, does it? That is furnished to you.

Mr. Holden: Just a minute. I don't understand your question. If I may ask you, do you mean—

Mr. Walter: He says that item 1, $10,000,000 the figures were prepared in his office.

The Witness: I understood him to mean that.

Mr. Holden: Oh, yes.

Q. Now, item 2: Those figures were not prepared by you?

A. Yes, sir.

Q. I thought Mr. Hayden gave you that figure?

A. Oh, excuse me. That is true; that is true.

Q. Going on down those items by numbers, what ones were furnished to you by some other department of the road?

A. Item No. 2, which is "Right of way, Station and Terminal grounds"; item 17, "Telegraph and Telephone Lines"; item 21, "Shop machinery and tools"; items 30, 31, 32 and 33, being equipment: item 36, "Stores and supplies on hand"; items 37 and 39, being the amount invested in lines under construction, including the Spokane, Portland & Seattle.

Q. Now, as to all those items, the data is not your own, but was furnished you by someone else?

A. Yes, sir.

Q. As to that you have no knowledge as to its correctness?

A. No; no personal knowledge.

Q. You merely take what they furnished you as being correct?

A. Yes, sir.

Q. And as to the cost of the various supplies which go into bridges, rails, ties, frogs, switches, track fastenings, roadway tools, crossings, signs, interlocking and other signal apparatus, station buildings and fixtures, the cost items were furnished you by purchasing department, were they not?

A. No, not necessarily.

Q. Well, not necessarily, but were they in fact?

A. No. We made inquiry of the purchasing department as to prices, but our department is pretty well posted in matters of that kind, on account of our continually making estimates.

Q. In making your estimates, you get the prices from the purchasing department, do you not, Mr. Hogeland?

A. No. In very many items we do not. For instance, take station buildings.

Q. Now, from whom would you ascertain the cost of lumber and of nails, paint, cement, brick and so on?

A. That we would get through the purchasing department.

Q. As to all items of that sort you take the prices given you by the purchasing department?

A. Why, naturally we would consult with the purchasing department as to the prices of all classes of material.

Q. And you take the transportation cost from the tariff department?

A. The rate, yes.

Q. And as to those factors of reproduction, you get them from somebody else?

A. I think we get most of our knowledge that way.

Q. And you take the figures they give you and use them as your experience directs you?

A. Yes, sir; verifying them by our experience.

Q. Have you talked any with the president of your road about the items and manner of reconstructing your road?

A. Yes; the matter has been one of discussion.

Q. A good deal of—

A. Quite a live subject for three or four years.

Q. And you have always had in mind that it has more or less bearing on the amount of revenue that you are entitled to receive from the public for your services as a common carrier—Is that true or not?

A. That is true.

Q. It is also true that you have talked the matter over with the Northern Pacific people?

A. Yes, sir.

Q. And your methods of reconstruction—the various segregation of items and all of that—largely represents the combined intelligence and experience of your officials and the Northern Pacific officials?

A. Yes; and you needn't limit it to that. These different classifications are those that the Interstate Commerce Commission instruct that the valuation or cost items should be separated into.

Q. Isn't it true only to this extent; that in keeping your accounts charges should be credited to certain distinct branches of accounting?

A. Yes, sir; and we have attempted to make this up that way.

Q. But as to the cost of reproducing the road, you don't mean to say that the Commission has directed—

A. I didn't say that. I said the method of dividing.

Q. So that there is not anything in your testimony which should be understood as indicating that the Commission, in finding the reproduced value of a road, would proceed as you have proceeded?

A. No, we divided it according to the classifications which they have instructed.

Q. It is also true, is it not, Mr. Hogeland, that you were pretty severely criticized for the low valuation made in the Spokane case?

A. No.

Q. Was that satisfactory to your people?

A. Why, I never heard anybody express any dissatisfaction with it.

Q. So there was no intimation to you that your prices and your values ought to be increased?

A. I testified yesterday in regard to interest, that that was a matter of discussion between our executive and accounting officers. It was claimed I was too low. I did not hear any dissatisfaction expressed particularly.

Q. "Dissatisfaction" perhaps is not the proper term; but an intimation that the correct valuation, for the purpose for which it was intended to use these figures, should be increased?

A. Yes, yes. It was claimed that in that item I was too low.

Q. And in a good many other items you were too low?

A. Well, I think the only other item that was discussed in that way was the item for legal organization and other expenditures, in which I took three per cent. instead of one per cent. I think that was the only other item that was discussed in that way.

Q. That is one of the big items?

A. A good sized item, yes.

Q. How much of this work is represented by advice from the law department?

A. I don't know what you mean.

Q. Has the law department indicated to you the general plan to be followed in making this reproduced value?

A. No.

Q. Not at all?

A. No. They put it up to us to produce the cost of the reproduction of the system.

Q. You are quite sure you have not omitted any substantial items?

A. Oh, I keep thinking of things all the time that have been omitted.

Q. Isn't it also true, Mr. Hogeland, that largely the earth work and rock work and the expense incident to its removal counted both in the excavation and in the filling? Can you tell about that?

A. What do you mean by that?

Q. That a cubic yard of earth would be counted, when excavated, and it would also be counted when it is used as a fill?

A. You mean in our estimates here?

Q. Yes.

A. Not at all.

Q. You have been very careful to separate your figures so as not to include a single yard of excavation—

A. No, sir; I didn't say that. We have been very careful to make it the way that the work would be carried out. Wherever a yard of excavation could be put into a yard of fill, and would be economical, we have figured it that way and paid for it once.

Q. Have you gone over the line of road to see what was was done—whether these excavation were put into fills?

A. That is determined from the quantities which are paid the contractors. Wherever those quantities were used, and

wherever it was estimated from the profile, that would be figured from the profile. Wherever the excavation could be hauled out into a fill, within the limit of haul, we would only include the quantities once. Whenever the fill was beyond the limits of haul, we would have to get our material from some other point, and would therefore have to pay for it. So that we have taken our estimate of grading quantity strictly in accordance with the way the work would be carried out.

Q. You can determine in your office from the profiles, but you have not, in making your estimates, determined it from what was done in the construction of the road?

A. I think we have; and wherever we have taken the contractor's original estimates—certainly if we take it the way it was paid for, that would indicate we were doing it the way it was done.

Q. But you took the amount moved, not the amount paid.

A. Certainly, we took the amount paid.

Q. I thought I understood you testimony to indicate that the 56 per cent. represented quantity only, and not prices.

A. Well, that is true. It represents quantity, but we only took quantities paid for.

Q. You don't know whether you paid for that excavating some place else and then, taking another cubic yard to put in the fill—you don't know whether there were two numerals or one?

A. It is reasonable to assume, in doing this work again, you would do it as you did it before. If you paid a contractor for it once, in that way you would pay him for it again.

Q. Isn't it true that in the present day excavating and handling of earth is very greatly different from what it was in the original production of this road?

A. No, I don't think it is. Steam shovels are used more largely, and that is because the character of work has become heavier. All roads are seeking lower grades, and they are making heavier cuts and heavier fills to do that.

Q. They were not used at the time this road was originally built?

A. Not to the same extent.

Q. Scarcely at all?

A. You cannot say that; but not to the same extent.

Q. Now, for the first ten or 15 years this road was built were steam shovels in use?

A. Very small ones.

Q. How many miles of road do you build the first year under your plan of reproduction?

A. I did not work out a scheme of reproduction. As I testified yesterday, I figured it might be possible to reproduce it in 8 years, and if that was the case, I think it would be safe to assume that about 1/8 of it would be done each year.

Q. Where would you build first, the 1,000 miles?

A. I think the work would be constructed in practically every state in order to carry it through in that time. We would start it at junction points with the other lines and work both ways from such junction points, in order to facilitate the whole thing.

Q. How soon would you have your line from Duluth to St. Paul and out to a point in the Dakotas?

A. I think it would take about as long to reproduce the lines in Minnesota as it would in the entire system.

Q. I am speaking now of your main line from Duluth to St. Paul and out into the Dakotas. Do you mean to say you would not build that first?

A. I don't think it would be economical to do that. I think you would find the cost of construction would run up so high that you would not try to complete the lines of Minnesota, for instance, in advance of rapid progress on the other parts of the system—that is, to figure out an economical system.

Q. You have figured on the construction of a good many railroads, haven't you?

A. Yes, a number.

Q. And don't you always, as a commercial proposition, undertake to lay down the main line of road so as to have it in use for operation as soon as you can?

A. Do you mean, to expedite the work as much as you can?

Q. Yes.

A. Yes, within reasonable limits. You are controlled a good deal by the supply of labor and contractor's equipment.

Q. So as to get some revenue coming in, as soon as you can?

A. That is, of course, the main thing—to get it earning something as soon as you can.

Q. Other things are to be subordinated, so far as properly may be, to that one thing?

A. Yes. But you can carry that thing too far in the way of running your price up too much.

Q. Certainly. Now during all these eight years you would not have any part of your line earning any net revenue?

A. That is my judgment. There might be little detached pieces that would earn something; but taken as a whole, no.

Q. And during those eight years you have allowed nothing for depreciation?

A. No, sir; no depreciation has been allowed in this statement.

Q. And you are satisfied that that is the fairest method in which to calculate the cost of reproducing the Great Northern proposition?

A. There is no other way of calculating the cost of the reproduction of the property as a new property, that I know of.

Q. I am asking you if that is the fairest way you know.

A. Being the only way, it is the fairest way.

Redirect Examination.

By Mr. Holden:

Q. You have not shown in your figures here, Mr. Hogeland, any fund or charge for depreciation. By that, I mean, directing your attention, for instance, to the regulation which the Interstate Commerce Commission promulgated 2 or 3 years ago, they require for the depreciation of equipment the laying aside each year, or have left it thus far to the carriers to determine, within certain limits, just how it shall be done, but have required it to be done—that a fund shall be set aside out of earnings against depreciation of equipment. Using that as an illustration, you have shown here no sum to cover that character of an item.

A. No, sir; nothing has been included for that.

Q. And in figuring the cost of reproducing the system, you have figured the cost of reproducing it new?

A. I have.

Q. Regardless of what should be said or done on the question of depreciation of such parts of the property that would meet with depreciation?

A. That is true.

Q. And neither have you added anything for appreciation —such, for instance, as would appear in certain tables that were offered by Mr. Morgan, the chief engineer, in the Minnesota case, and was called Adaptation and Solidification of

the roadbed, which is in the nature of appreciation, as I understand it. You have shown nothing of that kind.

A. No, sir; we have shown nothing of that kind.

Q. You have added nothing to these figures which might represent the appreciation through the course of time of such portions of the property as might be said to grow in value through the effect of time and use and maintenance, and things of that sort?

A. No, sir; we have added nothing for that.

Q. Those are questions not dealt with in these figures?

A. That is true.

Q. Now, if you should, in the process of reproducing these lines, concentrate all of your work in one state—or to recur to your testimony of a moment ago—if you undertake to first construct the Minnesota lines complete as they are today, what effect would that have on, for instance, the item of labor, as compared to labor if you spread out the construction over the system in some such way as you have indicated, starting work practically in every state where there is a feasible junction with other lines of other companies now in operation.

A. It would make it altogether much easier to secure the labor, because you could get it from all of the various markets which are nearest to the point where you would be carrying out the work.

Q. That is what I mean. By spreading out the construction, and beginning it at a number of points over the system, you would get labor easier, and therefore at a lower cost, would you not?

A. Yes, sir. And then there is another consideration in that. Large contractors all have a following of smaller contractors, and naturally you would have to depend on a large number of large contractors to carry out your work. Now, it is necessary to have them have all kinds of work—rock work and team work and steam shovel work—to keep all of their sub-contractors employed. For that reason, to carry it out, the most economical way would be, you would have to distribute practically over the entire period portions of the rock work, the steam shovel work and the team work. That would be a further reason for attacking the problem in each state.

Q. Now, Mr. Walter referred to the desire to make a constructed line began to pay upon commercial business as soon

as possible. What bearing do the facilities, such as the station grounds and terminal grounds and the passing tracks and the completed main tracks for operation, have upon the doing of commercial business economically? In other words, until you have your facilities practically ready for commercial business, and have your track matured, so that operation can go on expeditiously, and your passing tracks in, so that trains will not meet delay, and all that class of facts, is it possible to make the commercial business return anything like a result, which does come after your system is completed in that way?

A. Why, no. Your cost of operation is increased by all of those facilities that are not ready, not prepared, for the economical handling of any business.

Q. And to the degree that the road lacks those facilities the commercial business costs more, does it not?

A. That is certainly true.

Mr. Holden: Now, Mr. Walter called attention to certain items in this Exhibit 15 which Mr. Hogeland indicated by the numbers shown on the first page, in which the figures were turned over to him by other officials of the company. I understood yesterday, when I was going over the matter with Mr. Hogeland on direct examination, that such items as those referred to were not criticized because Mr. Hogeland was not the immediate officer who prepared them. I do not want to have any misunderstanding on that subject, and I propose to call, if it is desired, the witnesses who made up the figures on those particular items, so that I will have this record show the basis upon which each of the items was made, as well as those made under Mr. Hogeland's supervision. If there is any claim made, for instance, that the figures shown for equipment are not shown to your satisfaction, so far as the basis on which they are made, and the prices applied, and the quantities made use of, I think it is no more than fair that the statement should be made now, so that there will be no misunderstanding on that subject.

Mr. Walter: Of course, we do not accept any testimony given as being conclusive and final. We shall undertake, at the proper time, to meet such testimony as we think should be met; and if you have any testimony which you want to add, you have perfect freedom to do it. We do not agree that any of it is to be accepted beyond what its evidentiary value would indicate. That is entirely with you.

The Master: Would you object to these, for instance, on the ground that they are hearsay.

Mr. Walter: I think his testimony, largely, indicates that it is hearsay.

Mr. Holden: Well, I think it is proper now. I just call attention to the decisions on this subject—for instance, in the North Dakota Rate case, tried several years ago, before Judge Amidon and Judge Thayer, I think that substantially this method was adopted in showing, not these kind of facts, but evidence from the records of the company. For instance, there the question was in relation to the earnings and expenses in rate matters, revenue matters, and expense matters, bearing upon the rate laws that were being tried there, and the chief officer from this or that department of the company was called and testimony was introduced, in the way of statements, collected, as they were, through the various divisions of the company's forces, relating to those subjects, and, as supplementary to those exhibits, the offer was made, as is made here, to produce any and all records, and any and all witnesses, and men, who took part in preparing the statistical data and the fullest offer was made, as I make now and have made, to submit the basis of all the figures for the most critical examination that may be desired. Objection was made later on in the progress of that case that the tables and statistics were hearsay—that was the meat of the objection—and the court said that, with that offer and growing out of the nature of the case, the proof was admissible, and they took it and passed upon it as competent evidence.

The Master: Failure to attack.

Mr. Holden: In connection with the offer to give all the basis and the records and the men, and the failure on the part of the other side to attack it, because it was, in a sense, partly hearsay, as gathered by one man into his hands, from various sources. Now, I do not want to have any misunderstanding in this case. If you object to any of this testimony on the ground that it is hearsay, if it takes all summer, we will produce the witnesses here. And, of course, if your objection is that, granted the basis to be reasonable and fairly and accurately and honestly made up, as far as human witnesses are able to make computations from long and involved records, that the evidentiary value is not as claimed, why, that is a wholly different matter. But I do not want to have it come up afterwards, that because we do not produce the superintendent of motive power, and that he did not go on the stand,

and, under oath, testify to the number of locomotives and the basis of the prices, that therefore that part of the exhibit is incompetent. I do not want to have an objection of that kind made after we rest our case. I think it is a perfectly fair statement to make, and a fair request to make, and that we ought to have an understanding on that subject.

Mr. Walter: I will just state frankly our position in this case. The cost of reproduction of these two systems is completely new to this case. We shall probably avail ourselves of your offer, and your kind offer, to turn over all your records and everything for examination by parties employed by us. That will take quite a good deal of time. We shall do all we can to expedite it. So far as these figures you give, they differ widely from figures heretofore given in other cases, regarding similar matters, and we cannot really accept them as being complete and entitled to all credit that evidence might have in court. We do not expect you to call the superintendent of motive power to say that an engine is worth so much; we simply have to take what you give us, and check it up. That is the best we can do, and that is all we can promise you in this case. We do not say that we won't object as to any feature of this.

Mr. Holden: Of course the exhibit has been introduced without objection, and my understanding now is that you, in effect, concede, as an illustration, that if the superintendent of motive power were called and put upon the stand, he would testify to the facts relating to equipment, as shown not only on the first page of Exhibit 15, but also in the detail following, relating to equipment, which appears on pages 22 and following.

Mr. Teal: May I ask something?

Mr. Holden: Yes.

Mr. Teal: Now, I think our understanding is the same on this. If I understand this matter rightly this exhibit goes in upon the proposition that, instead of calling the superintendent of motive power, for instance, to show that there are 1078 engines, we are conceding that if the superintendent of motive power was called he would testify to that, and he would testify that this was their value; but we are not conceding that that is their value at all.

Mr. Holden: Oh, no; I am not asking that.

Mr. Teal: We are not conceding any of that, nor that the basis is proper. There is one thing in connection with that, while the engineer is on the stand, which might save a little

time. If he knows, I would like to have him state to the court what basis of value he arrived at in figuring this value of a locomotive, for instance. That is, does that purport to be the cost price, plus the freight, on that locomotive? Is that the idea?

The Witness: No, sir; it purports to be the cost of reproducing it as of the year 1908.

Mr. Teal: How would that be taken? That is the point I want to make—just to get that a little clear. How would you figure that cost?

The Witness: Well, that was figured on the basis of what the manufacturers would charge for that locomotive to-day, plus any cost of landing it at St. Paul.

Mr. Holden: When you say "to-day" you mean as of—

The Witness: I mean as of that date.

Mr. Teal: In other words, it is the manufacturing cost plus freight?

The Witness: To the point of delivery.

Mr. Teal: To the point of use or point of delivery?

The Witness: Yes.

By Mr. Walter:

Q. The condition, all new, all equipment, and without any reference as to their present condition—that is, as of June 30th?

A. Yes.

By Mr. Teal:

Q. Now, for instance, we will take the passenger cars. Without going into any details about it, the same rule, as you understand, was observed in those prices?

A. Yes, sir; the same rule.

Q. Now, in the freight cars, the same rule was observed in fixing the value?

A. Yes, sir.

Q. There was no allowance made for freight carried by those cars to the point of delivery, but it is just simply the cost of the car, plus the freight on that car, to the point or delivery or its haul?

A. That is my understanding; yes, sir.

Mr. Walter: "Tools," the same way.

Mr. Holden: I understand that is the general basis of all these figures.

Mr. Teal: I don't see any occasion for putting you or anyone to the trouble to say the man would testify to that. I am willing to concede if the men were called they would testify that way.

Mr. Holden: Of course, I anticipate that there will be a contest on the ultimate evidentiary value of all our proof; but the mere question I raised, and it was suggested by Mr. Walter's cross examination—

Mr. Teal: I think you attached more weight to that than was intended.

Mr. Holden: —was to be made, because the actual witnesses were not brought into court.

Mr. Walter: We just wanted to see how this was made; that is all.

By Mr. Holden:

Q. You said a few moments ago, on cross-examination, that Minnesota construction was not to be classed as light construction. What can you say, briefly, about the characteristics of construction of railroad lines in the State of Minnesota?

A. Through the greater part of the State the lines necessarily follow the valleys and along the edges of lakes, and Minnesota has a very large number of lakes, making it bad ground to build railroads upon, on account of the settlement which takes place. That is more particularly true of Minnesota than any other state we pass through.

Q. The Great Northern lines are quite largely in the Northern half or the Northern two-thirds of the State of Minnesota, are they not?

A. Yes; you would call it about the northern two-thirds, I suppose.

Q. And is it not a fact that there is a very large number of meandered lakes in the State of Minnesota, and a much larger number of other bodies of water, and marshes, wet country, generally speaking, throughout that northern two-thirds of the State?

A. Yes, that is true.

Q. It has been stated that the states of Minnesota, Wisconsin and Michigan present as much, if not greater difficulties in the way of securing a permanent and stable road-bed, than most any other State in the country. What is your judgment?

A. I think that is true. I have very little knowledge of Michigan, but have of the Northern part of Wisconsin and all of Minnesota, and I think there is more difficulty in securing a good foundation for a railroad through Minnesota, and especially the northern half of Minnesota, certainly, than any other of the states we pass through. I should add to that the nature of the material in a great many of the lines in Minne-

sota, especially those in the neighborhood of the Iron range are very unfavorable to the construction of railroads, on account of being largely a red clay.

Q. Referring to your estimate put in in the Spokane case: You stated that that showed an average per mile of main track of $62,000, is that right?

A. $62,511.

Q. Now, how is that average arrived at—or, to state what I have in mind—that is the average of the total, which includes all of the facilities along the line, as of that date, as shown by that estimate?

A. Yes, sir; and is an average obtained by dividing the miles of main track—not the miles of total track.

Q. Now, the present estimate, omitting items 36 to 39, you say shows approximately $75,000 per mile?

A. Yes, sir; $75,360.

Q. What is the difference in the totals of your Spokane estimate and your present estimate?

A. $134,473,400.

Q. Now, of that $134,000,000 how much is accounted for by new work, new construction, new material, new investment, since the Spokane figures were made?

A. About $61,000,000.

Q. That leaves, in round numbers, $73,000,000 yet to be accounted for; and of that will you state wherein lies the difference?

A. It practically all lies in the item of general and legal expenses and interest.

Q. Outside of those two items, substantially your figures agree with the Spokane figures when the new investments are taken into consideration, since the Spokane figures were made?

A. Yes, sir.

Q. Now, Mr. Hogeland, to make it perfectly clear, in bringing out these average figures per mile, in either of these estimates, those are not limited to the mere cost of constructing a mile of track, but includes the total figures—not only the cost of all of the land, but the cost of all the structures on the land, whether it be track or grade, or whether it be buildings, or whatever it may be—these gross figures per mile include all of the facilities which the railroad has for operating purposes?

A. Yes, sir; and including equipment, which you did not mention.

Q. Yes; I omitted to mention that. And includes also the

equipment. Now, I should have asked you before—When were these figures made up for the Spokane hearing?

A. They were made up in the early part of 1907. I think the hearing there at Portland was about the middle of May.

Q. And over what period of time have you had this matter under consideration—I mean this matter of determining from your records, and your own knowledge and experience, these figures representing what it would cost to reproduce the Great Northern lines?

A. I should say practically four years.

Q. What was the first occasion which arose whereby you were called upon to give the matter consideration along these lines?

A. I think the first was in connection with the valuation in North Dakota, which took place several years ago. While I did not prepare a complete statement, a great deal of the information was gotten together in our office, but the work began in earnest in the early part of 1906, when we were called upon by the Railway Commissioners of Minnesota to prepare a valuation or a statement of the cost of reproduction of the lines in Minnesota, and from that time on it has been continuous work, both as to different states, and as to the system.

Q. The state authorities of Minnesota called upon each railroad in the state to return their judgment of the cost of reproducing their lines in the state, did they not?

A. Yes, sir.

Q. And they had prepared, printed and presented to each carrier in the state, blanks containing a classification of the different items, quite similar to those adopted here, did they not?

A. Yes, sir.

Q. And that was done under the direction and supervision of the engineer, Mr. Morgan, employed by the state authorities for that purpose?

A. Yes, sir.

Q. And in order to fill out those blanks, that called upon you and your company to make a beginning to ascertain figures in relation to each of the different items covered by the statement? That is true?

A. Yes, sir.

Q. What were the circumstances under which the Spokane Exhibit was made up? I direct your attention chiefly to these items that you say embrace the chief differences—the legal and general expenses, and the rate of interest?

A. Well, I can say as to that, that we were not able to give it as full consideration, before preparing that, as we have been able to give it since.

Q. And that subsequent consideration and change in your figures, as I understand you, has been the result of further conference with other officials of the company—other people?

A. Yes, sir; with those who had a better knowledge of those particular subjects.

Q. And during the intervening period of time, the examination and re-examination of your own records, has been going on by a considerable force?

A. It has been going on constantly by a considerable force.

Q. And the result has been the working out, not only of the main exhibit, but also the supplementary exhibits based upon the records?

A. Yes, sir.

Q. You spoke about the cost of the Portland and Seattle, in response to some of Mr. Teal's questions, and that that present average cost per mile does not include equipment, that is true, is it?

A. Yes, sir. The figures which Mr. Teal mentioned, in round numbers, is my understanding.

Q. And to what extent do those figures include the facilities, such as passing tracks, buildings and water stations? Are those all completed on that line?

A. Yes, I think it covers those things pretty completely.

Q. You think those have been pretty well completed?

A. Pretty well completed.

Q. Are there any other items that occur to you, except these final bridges and culverts that you referred to, which are not completed yet?

A. No. Those are the main items. There are many jobs of rip rapping, but those are the principal items.

Q. How about the facilities from Pasco north to Portland up to June 30, 1908. The work was wholly incomplete there, was it not?

A. You said Pasco to Portland. You mean—

Q. Pasco to Spokane.

A. Yes; that was wholly incomplete at the time this estimate was made. I understood Mr. Teal to refer to the part between Pasco and Portland in his questioning.

Q. When was the Cascade Tunnel built?

A. It was building during the years 1897, 1898 and 1899.

Q. And it took about how long to construct it?

A. Between three and four years.

Q. Does that have a bearing upon your statement that, for an economical method of building from the Eastern terminals to the coast, you would still, if you were going to do it over again, build the switch-back over the mountains?

A. Yes, sir; for the reason that you could not get your machinery and your outfit in there to build your tunnel, until you had railroads reasonably close to the tunnel.

Q. Now, speaking on that subject. You say to a certain extent there are quantities embraced in certain grades, included in your present figures of quantities on other grades. Abandoned grades are not included. Now what is the reason for including some and excluding others?

A. That is because I only considered it fair to include grading on such portions of the line that had been abandoned and it seemed to me economical to build again, in the case of the reproduction of the system. That would be principally, because the original lines in such places were principally light construction. They were originally built as temporary, and by doing it that way you would be able to get the heavy equipment in necessary to carry out the heavy work, and the whole would be carried out more enonomically by doing the work again the same way.

Q. You have given individual consideration to the different places and different grades where temporary line had been built and then later the final line had been re-located?

A. We have considered each one separately, and only included those that in my opinion should be included for that reason.

Q And if the final line were built in the first instance, your judgment would be that a much less economical result would be arrived at?

A. Why, yes, sir; and it would not only be that—it would retard the completion of the whole thing.

Q. And necessarily retard the day when the commercial income would begin to make an appearance on the right side of the ledger?

A. Yes, sir.

Q. You spoke, I think, of a figure which showed that there were 6,195,900 cubic yards of such embankments, in your present figures?

A. Yes, sir.

Q. I simply wanted to direct attention to page 9 of Exhibit 15, where the total cubic yards of earth, hard pan, loose rock and solid rock for the system are shown to be over 217,000,000 cubic yards, and that this amount of so-called abandoned right of way is only 6,000,000 out of 217,000,000. How much is the yardage of the switch-back?

A. 245,500.

Q. That is the yardage of that part of the line that was abandoned when the tunnel was completed?

A. Yes, sir.

Q. Now, Mr. Hogeland, how have the new lines of the Great Northern road ordinarily been built? You spoke as to one or two that were built under separate organizations. I wish you would state what the general fact has been in that regard?

A. In nearly every instance they have been built under separate organizations.

Q. You mean by that, that a separate company has been formed, usually, has it not, in the state where the work was to be done.

A. Yes, sir; usually that way.

Q. And a separate financial organization and arrangement for producing the money has been made for the company that has been building the particular extension or extensions?

A. I cannot tell you much about the financial arrangement, but I know that they have been built under separate organization.

Q. Under separate organization. That was the chief point I had in mind. Now, what has that to do with the question of the carrying charges for the material going into the construction of such lines?

A. I think that was the reason for charging tariff rates on material, men, and outfits.

Q. Is it not a fact that the Interstate Commerce Commission has required, and still requires, that in every case where a line has a separate organization, any carrying of material for it by even an affiliated line or an associated line must be carried at tariff rates only?

A. That is my understanding. I am not fully posted on matters of that kind.

Mr. Walter: Don't you think if they do that throughout these eight years of building that the parent corporation, the Great Northern Railway Company, would have something to show in the way of revenue, if it did charge the full tariff rates to the construction company.

The Witness: Not during the period of reconstruction, because your railroad would be in such an imcomplete condition that I do not believe you would have anything over operating expenses.

Q. That is exactly the question I was going to ask you. Given the property, we will say, in Minnesota—a completed and matured line as it is to-day—and the construction of a branch line in North Dakota by a separate company, that you speak of: Is that a parallel case, so far as the cost of carrying material, to a case of reproducing your system in the period of eight years and moving material over a half-constructed line, half-ballasted, with half its facilities?

A. Why, no; the conditions are entirely different.

Q. And your reason, as I understand it, for claiming that tariff rates over a line under construction present a reasonable basis of charges results in the expensive character of the transportation, while a line is in that condition?

Mr. Teal: I would like to make an objection. This witness has never stated that he believed the tariff charge presented a reasonable estimate of a method. He simply said that he used it. Because what he knows he knows. But he has never made any such statement as that.

Mr. Holden: I thought he did, Mr. Teal.

Mr. Teal: No, sir; he never has.

Mr. Holden: I will ask him the question then.

Q. In determining the question of what would be a fair charge for moving construction material over the line under construction, what has been your reason for using tariff charges? I wish you would make perfectly plain what that basis is.

A. Primarily I thought it was right to use tariff charges, because for any material or men transported over other lines you would have to pay tariff rates, and a considerable proportion of your charges would be over other lines. But for such as you transported over your own line under construction, it would certainly cost very much more than it would on the line fully equipped for operation, and I therefore considered that even for such portion of the charges, it was as fair as any other way to take the tariff rates.

Q. That is exactly my understanding of your testimony. Now, speaking about the transportation of men to new work. Where do the men ordinarily come from—or, stating it in another way, do they always come from the terminus of your line?

A. No. The principal labor markets on our line are St.

Paul, Minneapolis, the head of the lakes—Duluth and Superior—Butte, Spokane and the coast points.

Q. Are you now, and have you always been, able to secure the labor necessary for new work at these labor markets?

A. Only after continual efforts and continually sending men to the work to replace those who moved on.

Q. Have you had at times to get men at other points off of your line, and transport them to the work on foreign lines?

A. Yes, sir.

Q. Can you illustrate that by any cases you have in mind?

A. The construction of the Billings and Northern in Montana—a great many men were brought from St. Louis over the Burlington system; a great many men were sent out from St. Paul and Minneapolis over the Northern Pacific.

Q. Why did you go to St. Louis to get labor?

A. At that particular time that was the best available market.

Q. Did you have to pay tariff rates over the Burlington line from St. Louis?

A. Yes, sir.

Mr. Walter: You don't mean to say first class passenger rates?

The Witness: No; that would depend on how they were sent.

Mr. Walter: Much less rates than the ordinary first-class passenger travel.

The Witness: I think they travel on a party rate.

Mr. Walter: Party rate excursion ticket.

The Witness: They traveled under the same condition, is my understanding.

Q. And you have utilized that kind of rates in figuring the transportation charges in this case?

A. Yes, sir.

Q. I wish you would turn to your Exhibit No. 16, Mr. Hogeland. You have called my attention, since yesterday, to a slight mathematical error in one or two of the figures there, which I would like to have you explain, so that it will be clear.

A. We find that in two of the items under "Total charges" there has been a clerical error in taking them out of the construction books.

Mr. Walter: What is the number of the exhibit?

The Witness: No. 16.

The Master: Cost of grading.

The Witness: Yes, sir; cost of grading.

Q. Just indicate what items they are.

A. In column 14, under "Total charges," the third item, being for the Brookston to Ellis line, we find that there is an error of $38,004, which would reduce the $396,539 by that amount. We also find in the sixth item, being the line from Kelly Lake to Nashwauk an error of $16,267, which would reduce the $99,983 by that amount; making a total correction of of $54,271. Deducting that from the $21,027,679 at the foot of column 14, leaves a total of $20,973,408. Dividing that by the total yardage—46,903,481—makes an average cost per yard of 44.72 cents, instead of 44.8 cents.

Q. Those are the only two errors found after the re-check of that exhibit?

A. After a complete check of the whole thing, which has just been completed.

Q. Now, speaking about ties for a moment: What is your idea in reference to the cost of reproducing the ties shown in the system, twenty three million and odd, as compared with the cost of reproducing other items, for instance, such as steel?

A. It seemed to me that ties were on altogether a different basis than any other material entering into the construction, for the reason that for all of the Eastern portions of the system at least, tie timber is gradually being exhausted; and considering a period of reconstruction extending over eight or more years, that, in my mind leaves no doubt but what the price of ties will advance materially.

Q. You treat the tie question, then, differently than other questions of construction material? You don't figure any advance on steel or anything of that kind, for instance?

A. No, sir; not at all.

Mr. Teal: Didn't figure any reduction on steel either, did you?

The Witness: No, sir.

Mr. Walter: You didn't take into consideration the fact that the ties you already had in your railroad had depleted the source of supply in Minnesota?

The Witness: No, sir.

Q. Now, do your figures contain any charge for the cost of getting the money to reproduce this system? In other words, if I understand the basis (if I may testify for a minute, Mr. Teal, just to call the attention of the Master and yourself) the assumption made here is that the money is obtained

apart, and there are no items in here such as discounts or commissions?

A. No, sir.

Q. And none of that kind has been included in your figures showing the cost of reproduction?

A. No, sir.

Q. And no charge against the work for the cost of getting the money that might be incurred, if an enterprise of this kind were undertaken?

A. No, sir.

Mr. Holden: I have one more exhibit which was handed to me this morning, which I would like to offer in evidence.

(Paper marked as Complainants' Exhibit 21 (Hogeland).

Q. I show you an exhibit which I have had marked "Complainants' Exhibit 21 (Hogeland)" entitled "Lines in Minnesota—Statement showing quantities moved by, and prices paid to, contractors, for grading of which vouchers are on file." Will you explain just what that exhibit purports to show?

A. Well, the heading which you have read explains pretty fully what it is. Do you desire me to take each column?

Q. No, it is not necessary to take each column. Just state what has been done in preparing this exhibit?

A. We have gone through our records as far back as we could, as far back as we had records of the various lines in Minnesota, and taken out from the vouchers paid contractors the cubic yards of the various classes of material and the amounts paid, and worked out average prices per yard from such as shown on the statement. The whole covers 26,043,930 cubic yards of earth, at an average price of 21 cents per cubic yard; 552,611 cubic yards of hard pan, at an average price of 40 cents per cubic yard; 156,310 cubic yards of loose rock, at an average price paid contractors of 45.6 cents; 189,625 cubic yards of solid rock, at an average price paid contractors of $1.17. This shows the amounts paid contractors. It does not include overhaul, transportation charges, or extra bills such as we mentioned yesterday.

Q. It appears that ranging over a period from 1885 to 1907, there has been paid to contractors, for moving earth, in the State of Minnesota, an average price of 21 cents.

A. Yes, sir.

Q. Now, turning to your exhibit No. 16, where the average price, including all charges, of 44.8 is shown, and the average contract price of 33.4, leaving 11.4 cents as the addition you referred to in your testimony, if that were added to the 21 cent price, shown on exhibit 21, it would make 32.4 cents, would it not?

A. Yes, sir.

Q. As the total price, including all charges?

A. Yes, sir.

Q. And similarly, the same showing would be made for other classes of work?

A. Yes, sir.

Mr. Holden: We offer this Exhibit 21 in evidence.

By Mr. Teal:

Q. You prepared an estimate in the Spokane case, did you not, Mr. Hogeland?

A. Yes, sir.

Mr. Teal: Now, I would like to, as a part of the cross examination of this witness, have Mr. Hogeland introduce, or have him present a copy of the estimate prepared in the Spokane case and of the tabulations accompanying it. You understand what I mean, don't you?

The Witness: Yes, I understand what you mean—presented just the same as presented in the Spokane case.

Q. Yes.

A. Yes.

Q. You stated that in this exhibit 15 of yours, that about $61,000,000 of that represents new work?

A. New work, improvements or additions to the property, investment in other properties, like the Spokane, Portland & Seattle.

Q. Now, I want to go through this just as fast as I can. Under items 36 to 39, which included "Stores and supplies on hand" etc. that amounts to $39,258,020. Is that part of the $61,000,000?

A. Which is that?

Q. The last four items.

A. How much do you say it amounted to?

Q. Well, the four of them, added up, according to my figures, in round numbers, $40,000,000?

A. I did not include all of the stores, because in the Spokane statement we had an item for stores, so that it is not right to consider the entire amount of stores shown in Exhibit 15 as an addition. About $1,800,000 would be the increase in the stores.

Q. About $37,000,000 of that amount would fairly represent it?

A. I have got it tabulated here, what I have for each item, if that will help you.

Q. All right. Read it into the record.

A. I will refer to Exhibit 15, and give the items as they appear there:

Item 2, Right of way	$ 800,000
Item 4, Grading,	2,800,000
Item 5, Tunnels,	500,000
Item 6, Bridges,	1,400,000
Item 7, Ties,	1,500,000
Item 8, Rails,	2,215,000
Item 9, Frogs and switches,	64,000
Item 10, Track fastenings	500,000
Item 11, Ballast,	200,000

Item 12, Track laying and surfacing	372,000
Item 14, Fencing	200,000
Item 16, Interlocking,	200,000
Item 18, Station building,	700,000
Item 20, Shops,	350,000
Item 21, Shop machinery,	200,000
Item 22, Water stations,	500,000
Item 23, Fuel stations,	20,000
Item 26, Docks and wharves	300,000
Item 28, Miscellaneous structures	520,000
Item 36, Stores and supplies,	1,800,000
Item 30 to 33, inclusive, Equipment,	15,000,000
Item 37, Lines under construction,	7,908,000
Item 38, Interest in terminal railways,	1,303,000
Item 39, Interest in Spokane, Portland & Seattle,	21,827,000

The whole, totaling $61,209,000.

Mr. Holden: You have simply given the round figures?

The Witness: I have given round figures; yes, sir.

Q. These items which you have now given represent, not the difference between the Spokane exhibit and this one, but the actual money that has been expended for the items which you have mentioned, is that correct?

A. No; I don't think you state it quite correct. It represents the increases that have been made in those items since that time.

Q. Does that represent actually new material or new building?

A. Yes, sir; or improvements.

Q. Or improvements?

A. Yes, sir.

Q. In other words, it does not represent at all, for instance, the difference between your estimate on the cost of the building at that time, and your estimate on the cost of the same building now?

A. No, sir.

Q. Now, that accounts for $61,000,000. As I understand, the difference between your Spokane estimate and this estimate is, in round numbers, $134,000,000, isn't it?

A. Yes, sir.

Q. That, then, leaves $73,000,000 to be accounted for?

A. About $73,000,000; yes, sir.

Q. If I understand it correctly, the interest charge is increased, in round numbers, about $55,000,000?

A. Yes, sir.

Q. The administration expense are increased, in round numbers, $6,970,000?

A. Something like that.

Q. And the additional cost on the rails, by reason of using a different basis this time, amounts, in round numbers, to about $3,450,000?

A. No; I think that amounts to about $2,235,000.

Q. That accounts for, in round numbers, about $65,000,000. That leaves about $8,000,000. Now, that $8,000,000—a very large part of that, would be represented by the difference in your system of figuring freight at this time, than formerly, wouldn't it?

A. No, I think not, Mr. Teal. You must recollect that the percentages are added to the whole thing—interest and organization expenses, and a part of it comes in in that, and my contingency being figured, now, on a larger sum, there would be some addition in that. By the time you analyze it, you account for a good deal more of it in that way.

Q. But those are the three big items?

A. Those are the three big items, yes, sir, you are right.

Q. Where one line, owned entirely by another line—simply a subsidiary corporation, paying to itself charges back and forth, is simply going from one pocket to another, isn't it?

Mr. Holden: I think that is a matter of argument. The Interstate Commerce Commission says it is not, because you have got to pay tariff rates, and I think that is the best answer to that.

Q. What do you think about it, where you form a subsidiary company in Montana, to build a road and operate it, and the parent road owns all the stock—to whom do the returns go, if there are any returns?

A. I suppose the returns go to the parent company in that case.

Q. On this Burlington road, which you took your people out on from St. Louis,—one-half of that stock is owned by the Northern Pacific, and one-half by the Great Northern, isn't it?

A. I can't tell you about that.

Q. You figured the advance on ties owing to the possible diminution of the supply in the future? That is the way you figured your—

A. I considered that it was fair to consider the price was likely to increase. But you will notice that I have used the same price that we did pay in 1907.

Q. Now, there is an enormous amount of steel of all kinds

used in the construction of this railway, as reproduced, is there not?

A. Yes, sir.

Q. Now, in arriving at the price of steel you have taken the prices that you have paid for the last two or three years, have you not?

A. Yes, sir.

Q. You have made no allowance for the fact that duty might or might not be taken off?

A. No.

Q. And therefore a reduction follow in the price of steel?

A. No allowance made for that.

Q. Well, you made no allowance for anything in connection with the steel?

A. No, sir.

Q. Excepting the assumption that the price for the last two or three years will prevail for the future?

A. Yes, sir.

By Mr. Walter:

Q. What is the average width of a single track, of the dirt that is moved or goes into the roadbed?

A. Well, are you speaking about the roadbed itself, or the tops of the cuts, or the bottoms of the fills?

Q. Yes.

A. Which?

Q. The average width throughout your 8,500 miles of track?

A. At the top of the roadbed?

Q. All over your system—the dirt that would have to be removed?

A. That is a pretty broad question. If you mean just the width of the roadbed where the ties are laid, I can give you that.

Q. How much is that?

A. That would probably average about 18 feet.

Q. Throughout your system?

A. Yes, sir.

Q. Now, you have given, in round numbers, 217,000,000 feet of excavation of all kinds?

A. No; cubic yards.

Q. Cubic yards, I mean?

A. Yes.

Q. That is an average of about 24,000 to the mile?

A. I think it comes something like that.

Q. And for each lineal foot of single track road, it would be something like five cubic yards?

A. Yes, I think it would be a little more than that.
Q. And a cubic yard would be 27 cubic feet?
A. Are you asking me that question?
Q. Yes.
A. We had that a good long time ago.
Q. No difficulty about getting at it?
A. No.

Mr. Holden: I don't think at this time I want to offer this in evidence (exhibiting paper to Mr. Teal), because it encumbers the record, and it is not necessary.

Mr. Teal: You have a right to refer to any of these things.

Mr. Holden: But I simply say now that in the argument of the case I shall refer to classification of expenditures for road and equipment, as described by the Interstate Commerce Commission, in accordance with Section 20 of the act to regulate commerce—the first revised issue—issued over the signature of Secretary Mosely from the government printing office in 1907.

Mr. Teal: Well, haven't we a right to refer to any official documents of the government in this case.

Mr. Holden: I think so.

Mr. Teal: There would be no objections on our part.

By Mr. Teal:

Q. Can you state, in your judgment, whether or not this cost of reproduction is greater or less than the original cost of the Great Northern Railway?

A. I can't state.

Mr. Walter: Is it greater or less than the value of the property?

Mr. Holden: Well, Mr. Hogeland is not called as a witness on that subject.

The Witness: If you would let me answer the question, I would say that the value of the property is greater than that.

Mr. Walter: How much greater?

The Witness: I am not prepared to say how much greater.

Mr. Walter: Do you know what the value of the property is?

The Witness; No; and I don't think anybody else does. I think that is what we are trying to arrive at.

Mr. Walter: What light does this reproduction throw on it?

The Witness: I think that it throws a great deal of light on it. That is just my judgment.

Mr. Walter: Just merely one element, isn't it?

The Witness: Yes, sir; I think it is one element.

(A recess was here taken until 2.00 o'clock p. m.)

WILLIAM G. JOHNSON, being duly sworn as a witness on behalf of the complainants, testified as follows:

Direct Examination.

By Mr. Donnelly:

Q. Mr. Johnson, what position do you hold with the Northern Pacific Railway Company?

A. I am assistant comptroller of that company.

Q. How long have you had that position?

A. About four or five years.

Q. You testified before the Interstate Commerce Commission, in December, 1907, in the hearing of the matter of this advance in lumber rates, did you?

A. Yes, sir.

Q. Have you prepared a statement, Mr. Johnson, showing the gross and net revenue of the Northern Pacific Railway Company since that Company has had possession and ownership of the Northern Pacific properties?

A. Yes, sir; down to June 30, 1908.

Q. Beginning at what time?

A. September 1, 1896.

Q. It was at that time that the Northern Pacific Railway Company came into possession of the Northern Pacific properties, was it?

A. Yes, sir.

Q. Will you produce that statement?

(Witness produces paper which was marked "Complainants' Exhibit 22 (Johnson).)"

COMPLAINANT'S EXHIBIT 22 (JOHNSON).

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING INCOME AND ITS DISPOSITION FOR THE PERIOD OF 12 YEARS AND 10 MONTHS BETWEEN SEPTEMBER 1, 1896, AND JUNE 30, 1909.

	RECEIPTS.			HOW DISPOSED OF					
Fiscal year to June 30th	Gross Receipts	Operating Exps. Depreciation of Equipment Taxes and Rentals	Net Receipts	Interest on Mortgage Debt, etc.	Dividends	Improvements	Appropriation for Insurance Fund	Surplus	Total
1897 (10 mos.)	$ 15,197,159.07	$ 9,597,082.17	$ 5,600,076.90	$ 5,110,248.00	.....	.....	.....	$ 489,828.90	$ 5,600,076.90
1898	24,566,914.86	11,778,170.91	12,788,743.95	6,079,160.00	$ 3,000,000.00	$ 811,709.35	.....	2,897,874.60	12,788,743.95
1899	27,050,280.75	13,161,105.57	13,889,175.18	6,079,275.33	4,600,000.00	2,176,619.26	.....	1,033,282.59	13,889,175.18
1900	30,706,839.02	15,358,070.26	15,348,768.76	5,864,950.00	5,400,000.00	3,000,000.00	.....	1,083,818.76	15,348,768.76
1901	33,304,770.48	17,695,185.69	15,609,584.79	6,395,681.25	6,200,000.00	2,011,285.00	.....	1,002,618.54	15,609,584.79
1902	42,231,144.75	22,559,046.74	19,672,098.01	6,624,865.83	8,499,946.00	3,000,000.00	.....	1,547,286.18	19,672,098.01
1903	47,254,655.89	25,604,069.55	21,650,586.34	6,904,696.66	10,074,943.50	3,000,000.00	.....	1,670,946.18	21,650,586.34
1904	48,007,928.68	25,855,687.32	22,152,241.36	6,922,930.15	10,849,989.25	3,000,000.00	.....	1,379,321.96	22,152,241.36
1905	52,644,452.75	28,570,227.84	24,074,224.91	6,947,983.33	10,850,000.00	3,000,000.00	.....	3,276,241.58	24,074,224.91
1906	62,942,821.88	35,468,941.61	27,473,880.27	6,986,140.00	10,850,000.00	3,000,000.00	$1,081,980.16	5,555,760.11	27,473,880.27
1907	70,873,156.61	46,351,304.67	24,521,851.94	7,175,722.21	10,850,000.00	*18,162,597.90*	.....	24,658,727.63	24,521,851.94
1908	72,983,899.47	43,127,501.44	29,856,398.03	10,205,790.25	10,850,000.00	.....	2,784,950.28	6,015,657.50	29,856,398.03
1909	72,614,038.06	40,904,975.66	31,709,062.40	10,043,418.86	14,105,000.00	.....	.....	7,560,643.54	31,709,062.40
Total	$600,378,062.27	$336,031,369.43	$264,346,692.84	$91,340,859.87	$106,129,878.75	$4,837,015.71	$3,866,930.44	$58,172,008.07	$264,346,692.84

NOTE.—The net receipts include interest on bank balances and bonds owned, dividends on stock owned and miscellaneous non-transportation income.

Q. I notice that this statement is divided under two general headings, showing under one the gross receipts and under the other the disposition made of those receipts. That is correct, is it?

A. Yes, sir.

Q. In the gross receipts, what has been included?

A. All the earnings from the transportation business; in fact all the receipts of the company from every source, except as to the capital items and receipts from land grant and so forth.

Q. All of its income?

A. All of its income; yes, sir.

Q. From every source?

A. Operating income and miscellaneous income.

Q. Now, it appears from that statement that up to June 30, 1908, the Northern Pacific Railway Company had net receipts of $232,637,630.44?

A. Yes, sir.

Q. Was that entire total derived from earnings from the operation of the road?

A. No, sir.

Q. Have you prepared a statement showing what portion of that total was not derived from that source, and the sources from which it was derived?

A. I have prepared such a statement; yes, sir.

(Paper marked Complainants' Exhibit 23 (Johnson).)

COMPLAINANT'S EXHIBIT 23 (JOHNSON).

NORTHERN PACIFIC RAILWAY COMPANY.

MISCELLANEOUS INCOME DERIVED FROM INTEREST ON ACCOUNTS, CASH IN BANKS AND INVESTMENTS IN SECURITIES—SEPTEMBER 1ST, 1896, TO JUNE 30TH, 1908.

INTEREST ON BANK BALANCES AND ACCOUNTS	$6,002,689.17
St. Paul & Grand Trunk Ry. Bonds	1,100.00
Superior Consolidated Land Co. Bonds	2,730.00
Northwestern Improvement Co. Bonds	2,067,666.66
City of Ashland, Wisconsin Bonds	115.00
DIVIDEND NORTHERN PACIFIC EXPRESS CO. STOCK	2,906,263.00
Rocky Fork Coal Company Stock	23,133.00
Oregon Railway & Nav. Co. Stock	239,105.00
Northern Pacific Coal Co. Stock	268,218.43
Puget Sound and Alaska S. S. Co. Stock	92,981.14
Northwestern Improvement Co. Stock	777,000.00
STUMPAGE CUT FROM LANDS IN WASHINGTON	7,492.99
NET RECEIPTS FROM TOWN SITES	14,826.55
Total	$12,403,340.94

St. Paul, Minn.,
April 26, 1909.

Q. It appears from this statement, "Complainants' Exhibit 23," Mr. Johnson, that a total of $12,403,340.94 has accrued to the Northern Pacific Railway Company from other sources than from the operation of the railroad property?

A. Yes, sir.

Q. And that includes interest on bank balances, and dividends on other stocks owned by the Northern Pacific Railway Company, stumpage cut from lands in Washington, and receipts from town sites?

A. Yes, sir.

Q. So that the total net receipts of the railway company for the entire period of its possession of the property, as shown on your Exhibit 22, should be reduced by the total shown on Exhibit 23?

A. Yes, sir.

Q. In order to arrive at the amounts earned or accruing from the operation of the railroad?

A. Yes, sir.

Q. Now, in your Exhibit 22, showing the disposition that has been made of the gross receipts of the Company, there

is shown, under the column headed "Improvements" an item, in red ink, opposite the year 1907, amounting to $18,162,597.90. Will you explain the meaning of that red ink item?

A. The red ink item referred to represents a transfer from income account to capital account. That is to say, that the improvements were temporarily charged to income account and afterwards transferred to the cost of the property under the head of capital.

Q. That is, previous to the year 1907, they had been charged to the improvement account?

A. Yes, sir.

Q. And in that year they were carried over to the capital account?

A. Yes, sir.

Q. And is that the explanation of the large surplus shown as of the year 1907, in the column headed "Surplus"?

A. Yes, sir; it is.

Q. There appears to be a surplus for that year, according to your present statement, of $24,658,000. That amount, then, consists of the actual surplus of that year, plus the $18,000,000 item, shown under the head of "Improvements" here?

A. Hardly that. It represents the net surplus of the accrued that year, plus the amount that was transferred from the improvement account, previously charged to income—to capital account.

Q. That, as I understand it, is the amount shown in red figures there?

A. Not altogether; because there were probably some improvements still left charged to income account,—a small amount.

Q. In other words, then, the surplus for the year 1907 was not the difference between $18,162,597.90 and $24,658,727.63?

A. No, not exactly.

Q. The actual surplus was less than that. There were still other items to be deducted from it?

A. Yes, the surplus was less than $24,000,000.

Q. Well, the sprplus was less than that difference that I have spoken of, wasn't it? If you were to deduct the red ink items shown opposite the year 1907, from the $24,000,000 item shown under the head of surplus for that year, would the difference represent the surplus for that year?

A. It would, approximately, yes.

Q. In the last column, under the head of "Total" there is shown the net revenue for each year during the period—

A. The net income.
Q. The net income.
A. Yes, sir.
Q. And it appears from this statement that during the first 10 months up to June 30, 1897, no dividends was paid on any of the stock of the Northern Pacific Railway Company; and the next year a dividend of $3,000,000—that was 4 per cent. on the $75,000,000 of then outstanding preferred stock?
A. Yes, sir.
Q. The next year the same dividend was paid on the preferred, and a small dividend on the outstanding common?
A. Yes, sir.
Q. And only during the last six years has a dividend of seven per cent. been paid on the entire outstanding capital stock?
A. That is my recollection; yes, sir.
Q. Mr. Johnson, have you prepared a statement showing the capital—that is stock and bonds—outstanding—
A. I want to stop you just one moment. You just put a question to me previously. I want to correct my answer. You asked me if the last column here wasn't net income of the company, or net revenue, on Exhibit 22, and I said "Yes." Well, that is not true. I want to get the answer correct.
Q. Well, you can just answer it. What does that last column represent?
A. The last column on exhibit 22 does not show the net income, but it shows the total net receipts of the company, the disposition of which is shown in the preceding five columns.
Q. And in the total net receipts is included these items that are shown in your exhibit 23?
A. Yes, sir.
The Master: It is the same as the third column, isn't it?
The Witness: The same as the third column. Just balances the statement.
Mr. Donnelly: Yes; it is the total net receipts.
Q. Have you prepared a statement showing the amount of securities outstanding against this property, Mr. Johnson?
A. Yes, sir; I have.
(Paper marked "Complainants' Exhibit 24 (Johnson)".

COMPLAINANT'S EXHIBIT 24 (JOHNSON).

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING CAPITALIZATION OF THE COMPANY JUNE 30, 1906, 1907 AND 1908, ALSO MARCH 31, 1909.

	1906	1907	1908	March 31, 1909
Common Stock	$155,000,000.00	$155,000,000.00	$155,000,000.00	$155,000,000.00
Common Stock, Subscription payments	.....	14,721,100.37	62,881,835.97	92,781,710.18
Total	$155,000,000.00	$169,721,100.37	$217,881,835.97	$247,781,710.18
Bonds issued	$172,938,500.00	$173,917,500.00	$174,886,500.00	$176,086,500.00
Bonds assumed	13,337,000.00	12,749,600.00	15,351,000.00	15,351,000.00
Car Trust Notes	70,312.68	36,276.00	2,239.32	.....
Total	$186,345,812.68	$186,703,376.00	$190,239,739.32	$191,437,500.00
Grand Total	$341,345,812.68	$356,424,476.37	$408,121,575.29	$439,219,210.18

The above is exclusive of N. P.-G. N. joint C. B. & Q. Collateral Bonds.

St. Paul, Minn.
April 26th, 1909.

Q. This statement, Exhibit 24, is intended to show all of the securities outstanding against the Northern Pacific property at the end of the fiscal years 1906, 1907 and 1908?

A. Yes, sir; as also March 31, 1909.

Q. Now, on that date, June 30, 1906, there was outstanding $155,000,000 of common stock, and, speaking in round numbers, $186,000,000 of bonds actually issued, bonds of other companies assumed and car trust notes?

A. Yes, sir.

Q. On June 30, 1907, I notice that the capital stock, the common stock, is represented as being $169,721,000 and odd. Will you explain the increase of the capital stock?

A. The 169 millions odd represent the common stock of $155,000,000 shown as outstanding in the previous year, plus $14,721,100.37 cash payments on account of subscriptions to new stock to be issued to the amount of $93,000,000.

Q. That issue of $93,000,000 had at that time been authorized?

A. It had been authorized by the Board of Directors—yes, sir, the stockholders.

Q. And the subscriptions were being paid in upon it at that time?

A. Yes, sir; in installments.

Q. Without giving over these items year by year, on March 31, 1909, the total outstanding common stock, including the original $155,000,000 and $92,781,710.18, on the new stock, represented a total then outstanding of 247 million, odd thousand?

A. Yes, sir.

Q. And the bonded indebtedness at that time, that is, the bonds issued and assumed, was $191,000,000?

A. And odd dollars, yes, sir.

Q. Making a total of securities outstanding against the Company, March 31, 1909, of $439,219,210.18?

A. Yes, sir.

Q. Now, this $92,781,710.18 shown under date of March 31st, 1909, did that represent actual money paid in to the Northern Pacific Railway Company for the new stock?

A. Yes, sir; actual money.

Q. All of it?

A. All of it.

Q. Not discounted in any way?

A. No, sir.

Q. And put into the Northern Pacific property?

A. Put into the Northern Pacific treasury.

Q. And a portion of it has been, up to the present time, put into the property, has it not?

A. Oh, yes, sir; spent for capital purposes.

Q. This statement is exclusive of the Northern Pacific's interest in the Burlington, and does not represent the—

A. Yes, sir; that is excluded from the statement entirely.

Q. Have you prepared a statement showing the percentage of east-bound long haul tonnage moving from the Pacific coast to points east of Billings, along the Burlington and along the line of the Northern Pacific, and showing the relative quantities of that tonnage, consisting of lumber and forest products and of all other products?

A. Yes, sir; I have.

Q. For what years?

A. For the fiscal years 1904 and 1906.

Q. Why was the year 1905 omitted?

A. Because I found that our auditor of freight receipts had changed the form of statistics for ten months, and that blocked me from getting the figures for the entire year.

Q. You say that it blocked you. Did it make absolutely impossible to get that information?

A. Not absolutely impossible, but it would have taken a very long time to have secured the data; and I have my doubts as to whether all the documents necessary to do that are available at this time.

Q. Why have you not brought it down to the years 1907 and 1908?

A. Because, after 1906, we stopped making such statistics.

Q. Would it be possible to do it for the years 1907 and 1908?

A. It would, with a very large force of men and a lot of time.

Q. It would involve an examination of the way bill of each shipment, would it?

A. Practically; yes, sir.

(Paper marked "Complainants' Exhibit 25 (Johnson)".

COMPLAINANT'S EXHIBIT 25 (JOHNSON).

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING TONNAGE OF LONG HAUL LUMBER AND SHINGLES AND ALL OTHER COMMODITIES SHIPPED EAST BOUND FROM OREGON AND WASHINGTON WITH RELATION OF EACH TO BOTH.

	Tons Carried.	Percent.
FISCAL YEAR ENDING JUNE 30, 1904—		
Lumber and Shingles	711,530	85.46%
All Other Commodities	121,080	14.54%
	832,610	100%
FISCAL YEAR ENDING JUNE 30, 1906—		
Lumber and Shingles	1,117,721	87.64%
All Other Commodities	157,648	12.36%
	1,275,369	100%

St. Paul, Minn.,
April 26th, 1909.

Q. From this statement it appears that for the fiscal year ending June 30, 1904, the tonnage of lumber and shingles moving from Oregon and Washington East—that is all long haul tonnage—was 85.46 per cent. of the total. That is correct, is it not?

A. Yes, sir.

Q. That is, all of the other commodities, aside from lumber and shingles, only equaled 14.54 per cent. of the total of the long haul tonnage?

A. Yes, sir; that is true.

Q. And for the year 1906 the percentage was 87.64 of lumber and shingles, and 12.36 of all other commodities

A. Yes, sir.

The Master: Is that the haul from Oregon and Washington points, clear through to St. Paul or to Chicago, or where?

The Witness: From Oregon and Washington points, to points on the Burlington and Nebraska, and so forth, leaving our line at Billings, to points on our line in North Da-

kota, Minnesota, Wisconsin, and points south and east thereof, constituting the long haul lumber business.

The Master: Through business.

A. Practically through business; transcontinental business, yes, sir.

Q. Could you, from your knowledge of the statistics of the Company—your general knowledge, Mr. Johnson—state whether or not the figures for those two years are fairly representative of the relative movement of lumber and shingles and all other commodities?

A. I believe they are; yes, sir.

Q. East-bound?

A. East-bound; yes, sir.

Q. Have you, by checking these results with the figures shown in the exhibits introduced by Mr. Woodworth, determined in any way as to their accuracy?

A. Yes. I took the number of acres shown in what is known as Woodworth Exhibit No. 6—

Q. Offered before the Interstate Commerce Commission?

A. Offered in evidence in Washington, in December, 1907.

Q. Just state how you checked these figures?

A. I was going to continue—such statement showing the number of cars of lumber and shingles that were destined via Billings to points on the Burlington, and south, to Minnesota, Dakota, Manitoba and to Eastern terminals and beyond, and by dividing the number of cars in each year—that is, in the years 1904 and 1906—into the tons carried, as shown by my exhibit No. 25, produced an average car loading that was very close to the testimony previously given in the case at Washington—which I believe is fairly good evidence that the tonnage moved, as shown by Exhibit 25, is correct, or approximately correct.

Q. Have you prepared a statement, Mr. Johnson, showing the increase of expense in some of the items incident to the movement of lumber and of other traffic generally?

A. I have made a statement showing a comparison of the cost of operation between the years 1908 and 1907.

Mr. Holden: Do you mean the fiscal years or the—

A. Yes, sir; the fiscal years.

Mr. Holden: Ending June 30.

The Witness: Ending June 30, 1908 and 1907.

(Paper marked "Complainants' Exhibit 26 (Johnson)".

COMPLAINANT'S EXHIBIT 26 (JOHNSON).

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING COST OF OPERATION, AVERAGE DAILY WAGE, AND PRICES OF MATERIAL LARGELY USED IN RAILROAD OPERATION AND MAINTENANCE FOR THE YEARS ENDING JUNE 30TH, 1907, AND 1908, WITH INCREASES AND DECREASES.

NOTE.—The expense figures for 1907 and 1908 are both on the basis of Interstate Commerce Commission's classification of Operating Expenses which went into effect July 1st, 1907.

	1907	1908	Increase or *Decrease*
COST PER DOLLAR OF REVENUE FOR—	Cents.	Cents.	Cents.
Transportation Expenses	29.50	30.40	0.90
Maintenance of Equipment	11.27	12.36	1.09
	40.77	42.76	1.99
Mtce. of Way & Structures	13.83	13.17	*0.66*
Traffic Expenses	1.09	1.18	0.09
General Expenses	1.44	1.31	*0.13*
TOTAL OPERATING EXPENSES	57.13	58.42	1.29
AVERAGE DAILY WAGE—			
Transportation Department	$2.77	$2.99	$0.22
Mtce. of Equipment Dept	$2.35	$2.45	$0.10
Maintenance of Way Dept	$1.84	$1.91	$0.07
COST OF IMPORTANT ITEMS OF MATERIAL—			
Coal per ton	$ 2.39	$ 2.45	$0.06
Rails per ton	29.49	29.93	0.44
All classes of ties, except treated ties	.43	.437	0.057

St. Paul, Minn.,
April 26, 1909.

Q. Just state what is shown by that exhibit, Mr. Johnson?

A. The exhibit shows that the cost of transportation expense increased 9 cents for every hundred dollars of revenue.

Q. And by transportation expenses you meant what—just so the Master will get an idea of what is included in that?

A. The expense directly incident to the movement of business.

Q. Wages of men, train employes and so forth.

A. Train employes, yard employes, and what is known as general transportation department employes. That for maintenance of equipment the cost increased $1.09 per $100 of revenue; the total of both being an increase of $1.99 per $100 of revenue for what may be known as the cost of moving the business, including the maintenance of the equipment used therefor. That maintenance of way and structures decreased 66 cents per $100 of revenue. Traffic expenses increased 9 cents per $100 of revenue, and general expenses decreased 13 cents per $100 of revenue. All operating expenses increased $1.29 per $100 of revenue. It also shows a further increase in the average daily wage of men working in the transportation department of 22 cents per day.

Q. Just let us understand that last. That has no relation to the $100 of—

A. No sir; it is an average wage per day.

Q. It is an absolute increase of 22 cents per day?

A. Yes, specific increase in the payment of wages.

Q. Yes.

A. Will I continue?

Q. Yes, go ahead.

A. Men in the maintenance of equipment department, 10 cents per day increase. Men in the maintenance of way department, 7 cents per day increase—all compared with the fiscal year ending June 30, 1907. And a comparison for the same two years shows that the average cost of coal per ton increased six cents; that the average cost of rails per ton increased 44 cents; and that the average price of all classes of ties, except treated ties increased 5.7 cents each.

Q. Does that represent material actually used during that period?

A. Yes, sir; the fuel and rails and ties represent material actually used in operation.

Mr. Donnelly: You may cross-examine.

Mr. Teal: I would say that we will want to call Mr. Johnson for cross-examination at the proper time, but I would like to ask him a few questions on this at this time.

Mr. Donnelly: Now, let us understand about that. Do you mean today?

Mr. Teal: No, not today; no, no.

Mr. Donnelly: Because we expect to close our testimony practically.

Mr. Teal: I understand that. I just want to ask Mr. Johnson a few questions.

The Master: You reserve the right to cross-examine him later on.

Mr. Teal: Yes; because it is manifestly impossible to take figures like this and cross-examine an expert witness.

Cross-Examination by Mr. Teal.

Q. Do you understand anything about the traffic operations of the Northern Pacific?

A. I don't know as I am clear as to what you mean by traffic operations.

Q. I mean, the conducting of operations—or is your business confined to the physical part of the company?

A. My business is confined to the accounting.

Q. You have prepared this table here, complainants' Exhibit 25 (Johnson), showing the lumber movement: I would like to have you state what line, running north and south, would represent the point from which this, which you call long distance haul of lumber—

A. Well, it would be the western boundary of North Dakota, practically, and to points in Western North Dakota we have very little business; and then all the territory south, on the Burlington, in Nebraska, and points south and east thereof, which business we transfer to the Burlington at Billings.

Q. And then that represents movement of lumber and shingles to 40-cent territory on your system, or higher—Isn't that about it?

A. Yes, sir; that is about it.

Q. It does not represent any movement west of that then?

A. No, sir.

Q. Do you know what your total tons were, carried by your entire system, for the fiscal year ending June 30, 1904, and June 30, 1906?

A. I don't know from memory, but I see some annual reports there. Perhaps I can draw it off there.

Q. I thought perhaps you knew for those two?

A. No.

(Pamphlets handed witness.)

The Witness: What is the question?

Q. Take the total tonnage for the year ending June 30, 1904.

A. East and west-bound?

Q. Yes, your total tonnage?
A. The total tons carried in 1904 were 13,283,477.
Q. 1906?
A. In 1906, or rather the fiscal year ending June 30, 1906, the total tons moved were 15,356,312. In each case I speak of revenue business.
Q. Yes, that is what I mean.
The Master: That is, all classes.
The Witness: All classes of business carried by the Northern Pacific.
Mr. Donnelly: Moving in whatever directions, and whatever business.
The Master: Both through and local?
Mr. Teal: Yes; all kinds of business, this is.
Q. Then, your lumber traffic east bound—that is, your long distance traffic, east bound, has been a very considerable portion of your business altogether, hasn't it?
A. Yes, sir; that is true.
Q. Now, commencing with the year 1896, you commence in your statement here, do you not, with 10 months of 1897. Taking your Johnson Exhibit 22, there has been, up until the year 1908, a steady and continuous increase in both your gross receipts and your net, has there not?
A. Yes, sir; that is true.
Q. And the business of the road has expanded and grown continuously, has it not?
A. It has; yes, sir.
Mr. Donnelly: The year 1907, I think, is an exception as to the net receipts, is it not?
Mr. Teal: Well, there may be some reason for that, too. I didn't notice that.
The Witness: It is less than 1906.
Q. In connection with these items of operating expenses, depreciations, equipment, taxes and rentals, I would like to know if that includes the accounts of maintenance of way and structures?
A. Yes, sir.
Q. And maintenance of equipment?
A. Yes, sir.
Q. Does it also include all of the special appropriations made for additions and betterments from 1898 to 1907?
A. No, sir.
Q. Now, where is that shown in this statement?
A. That is shown in the column headed "Improvements" under column Number 6 of the statement.

Q. That is shown under that column?

A. Yes, sir.

Q. Can you state how much per mile of road has been charged each year to maintenance of way as an operating expense account?

A. I cannot, off-hand; no, sir.

Q. And the same way as to maintenance of equipment?

A. Excuse me, a moment—I just wanted to know if you knew.

A. I could not give you those figures off-hand.

Q. This additional stock issue that has been sold from 1907 to 1909, was that subscribed for and paid for at 100 cents on the dollar?

A. Yes, sir; as far as I know.

Q. Not at the market value of the stock at the time it was delivered?

A. No, sir; as to that I cannot say exactly, because the price of the stock fluctuated very much, or has fluctuated very much in the last few years.

Q. The only point I was making was it was paid for at the par value?

A. It was paid for at 100 cents on the dollar; yes, sir.

Q. This statement, marked Petitioners' Exhibit 24, (Johnson), shows that the common stock was issued to the amount of $155,000,000, and was in existence prior to 1907. When that was originally issued, with the organization of this company, there was a preferred stock of $75,000,000, and a common stock of $80,000,000, was there not?

A. That was the starting point of the company, as I remember it.

Q. Can you state how much money was paid to the company for that stock, or any portion of it?

A. No, sir; I couldn't.

Q. Do your books show just exactly what was received for that stock?

A. No, sir; I don't believe they will. It was all based on the plan of reorganization, which I believe has been in evidence in this case.

Q. And you think that if, for instance, a lot of that common stock was sold for $15 a share, to anyone, that your books won't show it, if it was sold out of the treasury?

A. The officers of the Northern Pacific Railway Company, as I understand it, did not issue that stock. It was issued by the reorganization committee, or the Trustee.

Q. And you know nothing of that at all?
A. No, sir.
Q. Nor your books will not show it?
A. I don't think they will.
Q. Now, at that time, there was $129,816,500 of a mortgage debt, and then there were other bonds issued at the same time—Can you state how much cash?
A. Of what date are you speaking?
Q. The date of reorganization. How much cash was received?
A. No, sir; those matters were entirely in the hands of the reorganization committee.
Q. You have no report in your possession from the reorganization committee, showing just how this capitalization was created, what money was paid in, and the details of that reorganization?
A. No, sir; I haven't them in my possession.
Mr. Donnelly: Well, the detailed plan of reorganization has been submitted to the Interstate Commerce Commission. They had it in the Spokane rate case, and they had it in a number of cases. I think they are thoroughly conversant with it.
Mr. Walter: The report of the reorganization committee—is there any way in which you can furnish that—what they did with stocks and bonds and money?
Mr. Teal: I don't care to go on with this, if the witness don't know. I don't want to take up time with him on something he don't know about, because there will be plenty of time to look this up later.
Q. I notice here, Mr. Johnson, that there is no account taken of the Burlington collateral bonds, issued for the purchase of one-half of the stock of the Burlington by this Company?
A. No, sir; it is not included at all.
Q. That is a mortgage debt of this Company, is it not?
A. Not as I understand it; not of the Northern Pacific.
Q. Is it a debt of the company at all?
A. As I understand it, it is nothing but a guaranty on the part of the two companies—the Northern Pacific and Great Northern.
Q. And who is the obligor on this bond who has agreed to pay it?
Mr. Donnelly: That, I think, is an inaccuracy; but then it does not profess to be correct—as to the nature of the obligation of the Northern Pacific. But he does not profess to be

stating the character of that obligation. You don't understand?

The Witness: No; I have never seen the bond nor read the mortgage, nor am I conversant with any of its details.

Q. And in connection with these figures, which you have filed here, no account is taken in any way of any interest that the Northern Pacific has in the earnings of the Burlington?

A. Not at all; no, sir.

Q. And if the earnings of the Burlington and the surplus were millions none of that appears in here?

A. No, sir.

Q. But you do show the dividends paid, do you, of all other stocks and interest on bonds, and revenue received from all other sources than the Burlington?

A. Yes, sir.

Mr. Donnelly: That is, of all other revenue received by the Northern Pacific Railway Company?

The Witness: Yes, sir.

Mr. Teal: Yes, he understood that when I asked him.

Mr. Donnelly: That is all, Mr. Johnson.

Mr. Walter: We will try to let you know as soon as we can when we can take up the cross-examination of Mr. Johnson.

Mr. Teal: We will take it up when we start in again.

Mr. Donnelly: Yes, when you start in with your testimony.

Mr. Walter: Let me ask Mr. Johnson one question. This statement on Exhibit 25, as to commodities, refers only to traffic commodity rates, not class traffic?

The Witness: No, sir; it is of a traffic originating in Oregon and Washington, destined to the same general territory as the lumber and shingles.

Q. And doesn't have reference to the technical meaning of the word "commodity," in rate meaning?

The Witness: No, not as that word is known in rate meaning and tariffs. It is included in there.

Mr. Holden: I want to offer an exhibit which I will ask to have marked Great Northern Exhibit 27.

(Said paper was so marked.)

COMPLAINANT'S EXHIBIT 27 (G. N.).

GREAT NORTHERN RAILWAY COMPANY.

STATEMENT OF LOADS EASTBOUND THROUGH CASCADE TUNNEL FROM MAY, 1907, TO OCTOBER, 1907, INCLUSIVE; DIVIDED BETWEEN LUMBER, SHINGLES, FOREST PRODUCTS, ETC., AND OTHER COMMODITIES AND THE PERCENTAGE THAT LUMBER, ETC., BEARS TO THE TOTAL.

Month.	Lumber Shingles, etc.	Other Commodities	Total Loads.
May, 1907	2,855	834	3,689
June, 1907	3,612	626	4,238
July, 1907	3,671	716	4,387
August, 1907	3,458	777	4,235
September, 1907	2,693	727	3,420
October, 1907	2,774	806	3,380
Total	19,063	4,486	23,549

19,063	Lumber, etc	80.95%
4,486	Other Commodities	19.05%
23,549	Total	100.00%

Accounting Department,
Train Statistics Office.
4-7-09.

JS.

Mr. Holden: I want to offer this exhibit. This exhibit is based upon McGuire Exhibit No. 1, offered before the Commission at the hearing in December, 1907. That exhibit showed the actual number of loaded cars moving east bound during the months of May, June, July, August, September and October, 1907; and of those loaded cars I have had a division made by an examination of the records to determine what of those were lumber and what were other commodities; and that is what this Exhibit 27 shows.

The Master: It shows the percentage of the lumber traffic.

Mr. Holden: I offer this at this time subject to check,

and tender a witness, if desired by the other side, to explain the basis upon which it is made, and also tender our records upon which the exhibit rests, for examination.

HOWARD ELLIOTT, being duly sworn as a witness on behalf of the complainants, testified as follows:

Direct Examination by Mr. Donnelly.

Q. Mr. Elliott, you are the President of the Northern Pacific Railway Company?

A. Yes, sir.

Q. And have been for how long?

A. Since April 21, 1903.

Q. What has been your experience with the railroad business, Mr. Elliott, how long and in what capacities have you been connected with it?

A. I first began working for the Chicago, Burlington & Quincy Railroad Company on the 5th of July, 1880, in the capacity of level rodman. I worked in that capacity for three or four months. I then went to the Lawrence Scientific School at Cambridge, and took my degree as a civil engineer. In the autumn of 1881 I was a clerk in the vice-president's office of the C., B. & Q. Railroad Company, at Burlington, Iowa, for three months. On or about January 1, 1882, I went to Keokuk, Iowa, and was cashier of two small roads controlled by the Burlington Company known as the St. Louis, Keokuk and Northwestern Railway Company and the Chicago, Burlington and Kansas City Railway Company. I served as such cashier until the 15th of November, 1882, when I was appointed auditor and assistant treasurer of those two roads. I served in that capacity until January 1, 1887, when I was made general freight and passenger agent of the same two properties. On or about January 1, 1896, there was added to my jurisdiction, as general freight agent, what the other roads belonging to the Burlington Company, known as the Kansas City, St. Joseph & Council Bluffs Company and the Hannibal and St. Joseph Railroad Company, and I gave up jurisdiction over the passenger department. As general freight agent of those four roads which were operated as a so-called grand division of the Burlington Company, I had charge of the freight business on those roads in Missouri and Southern Iowa, something over a thousand miles of railroad, and also had charge of all business originating and terminating south of the Ohio River,

and east of a line drawn North and South through Kansas City, and destined to and from all points on the Burlington system I was general freight agent until 1896. I then became general manager of the same four railroads and served in that capacity until sometime in the spring of 1901, when I was elected second vice-president of the entire Burlington system, in charge of maintenance and operation, and all of their properties. I remained in that position until I was elected to the presidency of the Northern Pacific Railway Company.

Q. In October, 1903?

A. In October, 1903.

Q. During the 5½ years that you have been president of the Northern Pacific Railway Company have you become familiar with the Northern Pacific system?

A. I feel I have become reasonably familiar with the system. We have, as you know, large mileage and cover a great deal of territory. I have been over all parts of the road a number of times and over certain portions of it a great many times. I have also studied the territory tributary to the lines of the company, and have tried to inform myself as to its resources and the possibilities of the development of commercial business that would enable the Northern Pacific Company to grow and develop.

Q. Are you familiar generally with its terminal properties?

A. Yes, sir.

Q. And more particularly with those at Seattle, Tacoma and Spokane?

A. Yes, sir. I may say I am very familiar with those.

Q. It has appeared in the testimony of Mr. Cooper here that there is, at Spokane, at Tacoma and at Seattle, a quantity of land included in the land designated by him as the terminal properties of the company, at those places, which is not now in actual use. Will you explain why it was that that land was acquired, and what, in your judgment, was the necessity for acquiring it?

A. The Northern Pacific Company has, at Tacoma, Seattle and Spokane, large terminals, a large portion of which is in very active operation and use for the conduct of the commercial business of the company, and it also has acquired, from time to time, additional pieces of real estate, the location and area of which are such that they can be used for the addition to and enlargement of the existing terminals as the western country grows and makes such additional terminals necessary. Those additional terminals were bought, some, before I was associated with the management of the property, and

some since, for the very good reason that the owners of the Northern Pacific, in common with the owners of other property in the United States, realize that the country is growing, and they have tried, so far as their means and judgment would permit, to look ahead and acquire property that would protect the future, and hold that property in readiness for transacting the business of the company as it grows; also for the reason that if such properties had not been acquired ahead of time it probably would have been very difficult, and no doubt at times impossible, to buy a property when the urgent necessity arose for its acquisition.

Q. Then, in your judgment, is there any of this property not now in actual use that will not be required by the railway company for terminal purposes within a comparatively short time?

A. It is hard, of course, to foretell exactly the course of the growth of business of any given railroad system, but in my judgment, from such knowledge as I have of the growth of the western country, I feel that all of the property that the company has purchased since the reorganization will be needed, and is so located that it will be used sooner or later for terminal purposes.

Q. Do you consider that any unreasonable purchases have been made in that regard—that is, that any purchases of land have been made which are nto likely to be used for the purposes for which it was acquired?

A. I think not.

Q. You have seen the statement prepared by Mr. Darling, showing the cost of reproduction of the Northern Pacific Railway as of April 12, 1909?

A. Yes, sir.

Q. And you have gone over his method of the construction of that system, as it is shown in that exhibit, in which it is stated by him that in his judgment it would require 12 years for the completion of the railroad as it stands today?

A. I have not discussed with Mr. Darling in detail the preparation of this particular statement, but I have discussed with him a number of times the general subject and went over with him some of the details of the previous statements, and have talked with him on numerous occasions about the general idea of what it would mean to reproduce the Northern Pacific Railway system as it stands today.

Q. Now, in your judgment, and from your familiarity with the system, as it stands, what have you to say as to

the period of time allowed by him for the construction of that road in its present condition?

A. My judgment is that if a party of gentlemen undertook to reproduce the Northern Pacific system and have it in the condition it is today, that they would be extremely able men if they could reproduce it in twelve years.

Q. You think, at any rate, that it could not be reproduced in less time than that?

A. I doubt it very much.

Q. Well, if a party of men were to start to reproduce the Northern Pacific Railway, in your judgment, what interest would they be required to pay upon the money used in its reconstruction?

A. I understand that Mr. Darling, in making up this statement of April 12, 1909, has used a basis of 6 per cent. It may be that a party of men, of sufficient financial strength, could be gotten together, so that they could engage in an enterprise of this magnitude and carry it on at that rate of interest. If they did, I should think they were doing very well, indeed. I should think they might have to pay more.

Q. In other words, that if bonds carrying interest at 6 per cent. were to be issued in exchange for the money used in constructing the road, you would think that they were very fortunate if they received the par value of the bonds?

A. I should think they were very fortunate.

Q. Supposing the bonds would carry only five per cent. interest, Mr. Elliott. About what amount would you think would be realized on such bonds?

A. I doubt if on a new enterprise of that magnitude a 5 per cent. bond on a new institution would sell above 90. From 85 cents to 90 cents on the dollar.

Q. Assuming that this railroad could be reproduced within 12 years, and in accordance with Mr. Darling's scheme of construction, and that at the end of the 12 years it was completed, and in the condition in which it stands today, what is your judgment as to the likelihood of that property being able to earn, for the entire property, during that period of 12 years, any total in excess of the total cost of the operation of the entire property? You can develop your answer to that just as fully as you wish, Mr. Elliott?

A. I should doubt very much whether, taking a brand new property of that character, it would earn enough money to pay the necessary operating expenses and to make good the necessary failures that any new road develops, when it goes into operation, and to pay the taxes which would accrue upon

it, and have any material sum left over for the payment of interest.

Q. Take the Portland and Seattle Railroad, as a specific example: Is that road now in operation, Mr. Elliott?

A. It is in operation between Portland and Pasco.

Q. And has been for about how long?

A. I think it has been in operation about six months; I don't remember exactly.

Q. How long since the construction of it was begun?

A. What you might term the actual construction of the road was begun in the summer of 1905. That is to say, those gentlemen who were charged with the duty of deciding the large questions of that character came to the conclusion, during that summer, to go ahead, and began to get the necessary rights of way and make arrangements to build the railroad. It is fair to say that for many years prior to that date steps have been taken in the direction of creating that property; there was a great deal of preliminary work done in 1899, 1900, all along, a great deal of accumulated information was obtained, so that when what you term actual work was begun, late in the summer of 1905, they were able to proceed much more rapidly than if they had started right then as a brand new proposition.

Q. Now, that is an exceptionally well constructed railroad, is it not, Mr. Elliott?

A. Yes, sir.

Q. And running through a comparatively rich country?

A. Well, it runs along the Columbia river, which, in time, will develop a territory where there is lumber, and in which eventually a very large amount of fruit will be raised.

Q. Has that railroad, during the period that it has been in operation, paid anything in excess of operating expenses?

A. It has earned nothing in excess of operating expenses and taxes. I could not say off-hand whether there has been anything over and above the actual operating expenses.

Q. Take the lines of the Northern Pacific Railway Company in the State of Minnesota today. Under Mr. Darling's scheme of construction of a railroad, he assumes that at the end of the fifth year those lines of the railway company in this state, that are now in existence would have been constructed and in a temporary condition for the benefit of traffic; that is, that there would be a line from St. Paul to Fargo, a line from St. Paul to Duluth, and from Duluth to Staples. I understand his plan to assume that there would not be any sidings or branches in at that time. But, taking the railway as it stands today,

and assume that it was in a condition simply to care for traffic over the lines within this state, what, in your judgment, in view of the existing rates, would be the likelihood of that railroad at the present time earning anything in excess of operating expenses?

A. My judgment is it would be lucky if it earned its operating expenses, under the conditions that you outline.

Q. You are familiar with the Lewiston branch—I think it is—of the Grangeville line in Idaho?

A. Yes, sir.

Q. Has that line been in operation for some time?

A. It has been in partial operation. The road is hardly completed. We, at the urgent request of the citizens of Lewiston and of the plateau back of Lewiston, to which country that line is built, opened the road for traffic before the road was completed, and we suffered a large loss by so doing, because the expense of moving the business was far in excess of what we paid for it. It is a very heavy grade line, going up onto a high plateau, back of Lewiston. The road is not completely ballasted. We had to run ballast trains and do a good deal of work at the same time we were trying to move wheat out and merchandise in. The result was that we increased the cost of finishing the road. We handled the business very badly, and at a high expense, and we dissatisfied everybody, even including the people who were so urgent that we should begin to open the road.

Q. How long was that road?

A. The new railroad is approximately sixty miles long.

Q. Right in that connection, and in view of what you say of the difficulty of doing business over a line in that state of completion, what have you to say as to whether or not material can be carried over a line in course of construction at any rate less than the tariff rate now in effect?

A. My experience in the last five years here on the Northern Pacific, where I have had more to do with construction of large works than I had in my previous railroad experience, has led me to the conclusion that assessing against the cost of a railroad the normal freight charges, or tariff freight charges, for transporting such material and supplies as are used in the construction of a new line is rather below a fair charge to the cost of such property than above, especially when the haul is partly over a piece of partially constructed road. The expense of doing the business is very great, and the interference with the conduct of their construction makes insensible addition to your cost that you cannot perhaps com-

pute in money, but you know it is great delay to trains, great breakage to equipment, making the cost very much higher than what are called tariff freight charges.

Q. Then in point of fact, if it were possible to utilize another line for the carriage of the material and supplies used in the construction of a line such as the Northern Pacific, what would you be disposed to do, Mr. Elliott?

A. I should be disposed, in a great majority of cases, to use the other railroad and have them deliver the material to the nearest point to the work, paying them whatever they charged.

Q. What, in point of fact, has actually been the practice in connection with the construction of such lines as the Milwaukee? Have they utilized other lines in the carriage of their material?

A. Yes, the Milwaukee used the Northern Pacific very freely in the construction of their road, and delivered large quantities of their material to the Northern Pacific at different junction points.

Q. Now, take a property like the Northern Pacific, and assume that it had just been completed in the manner outlined by Mr. Darling in his testimony, and that it was actually in the condition, both as regards the railroad itself and all of its appurtenances and facilities, that the Northern Pacific Railway is in today, but that it had no antecedent history at all, and was simply a new railroad, but in the actual physical condition that the Northern Pacific is in at the present time: would such a property as that have the value that the Northern Pacific Railway has today, and if not, why?

A. In my judgment the Northern Pacific, if reproduced today as a piece of physical machinery, complete, in its details, as outlined in your question, but with no antecedent history, and with no commercial development, of which it had been a part, would be worth very much less than the property is today, with the growth of business about it, and the accumulated influence and momentum of quite a long number of years of business activity.

Q. Is the Northern Pacific Railway located favorably or unfavorably with regard to the territory through which it passes, and the points of commercial importance in the states through which it passes?

A. That question calls for possibly a little general statement of our property, and I can best answer it, perhaps, by

trying to make such statement as briefly as I can. Shall I do that?

Q. Yes, if you please.

A. To begin with, the Northern Pacific, extending from the head of the Lakes and from the twin cities to Puget Sound and the Columbia River Basin, has a profile for its transcontinental line, which is slightly better than any transcontinental line in the country. So that when you compute the resistance that must be overcome in order to move a ton of freight, or a car of freight the whole length of its railroad, and the amount of energy that it must exert, in order to do that, is somewhat less than other transcontinental roads must exert. That in itself is an element of value. The Northern Pacific is unusually well situated in that it has unsurpassed terminal facilities at the two great ports at the head of the Lakes,—Duluth and Superior—where the large exchange is made between rail and boat. It has unusual facilities there for reaching all present and prospective industries. It has unusual facilities for making connections with any other carriers to and from those two points. At the twin cities—St. Paul and Minneapolis—it has very fine terminal properties, and is well equipped for reaching industries here and for exchanging business with other carriers reaching the two points of St. Paul and Minneapolis, and through what is known as the Minnesota Transfer yards—an agency for the more rapid interchange of freight between connecting lines.

Going west from the head of the lakes and the twin cities, the lines of the company are situated in a good portion of Minnesota, where there is a miscellaneous commercial business of all kinds as good as that on any other railroad in the northern half of the state, and passing through a great many thriving towns and good counties, the railroad enters North Dakota and the Red River Valley, and it main line is through a reasonably good portion of North Dakota, but it has many branches in that state between the Red River and the Missouri River that bring to its main line agricultural products, and which open to the merchants and manufacturers on its line and elsewhere a good consuming market, because of the good country that these branch lines serve.

Going west of the Missouri river and as far as Billings, Montana, the road runs, for a portion of the way, from Bismark, North Dakota, to Glendive, over a rather rugged country, where, however, large quantities of grain are raised, a great many cattle are raised, and a very steady development of population and industry is taking place. At Glen-

dive, Montana, the road enters the Yellowstone valley, which is now a very productive and fairly well populated valley, and which is growing very rapidly, because the soil is of extremely good quality, and, with irrigation, very large agricultural crops can be raised. Outside of the irrigated areas in the Yellowstone valley there is a very large amount of first class tillable soil upon which crops have been raised in the last few years, without irrigation, and upon which there is every reason to believe that careful farming methods will produce a constantly increasing supply and agricultural output. In addition to that, in that part of the country there are large production of cattle and of sheep. When you get to Billings, Montana, or near Billings, Montana, the company has some branches that go down into two very productive little valleys—productive not only because of the cattle and sheep which are produced there, but also because of large coal tonnage that is produced and is shipped, both for the use of the railroad, and for the use of the citizens of Montana and west.

At Livingston, Montana, we approach the first range of the mountains that the company crosses, known as the Belt Range, and immediately before crossing those mountains, there is a branch, some 60 miles long, which goes to the Yellowstone National Park, and reaches the park at what is considered the official entrance of that national playground. There is induced over the Northern Pacific road, because of that national park, a very large passenger travel, and that travel is an asset of considerable importance to the railroad, in two ways: First, because the people travel over the road, as passengers, to visit that wonderful region, and, second, because such travelers see the country, study it, and in that way attract attention to the country, as a region for successful residence, either for health or for business. After crossing the Belt Range of mountains, the company enters the Gallatin valley, one of the tributaries of the Missouri river, and this Gallatin valley is one of the most famous agricultural districts in the Northwest. They raise very unusually fine crops of wheat and oats and barley under irrigation, and also good crops on the slopes of the mountains, without artificial irrigation.

After passing through the Gallatin valley the road has two bows, as you might call it, one running through Helena, Montana and around to Garrison, and one through Butte, Montana, and around to Garrison. The company has unexcelled terminal facilities in both Butte and Helena, and is in a posi-

tion, especially in Butte, to get the maximum amount of business to and from the mining camp, assuming that the rates and service offered by the company are equal to those offered by any other company.

We have in Montana, from the bow that goes to Butte—we call it a main line, not a branch—from that part of the main line we have several branches going into very productive little valleys where there is good agriculture—wool and some slight amount of mineral.

West of Helena and Butte there are three small branches that are not to-day particularly productive, although one of them produces a good deal of agriculture. The reason those three little branches are not particularly productive is that the mining operations in the territory for which the branches were built have not proved very successful up to the present time. There is, however, a great deal of mineral on all three branches, which may at any time be developed and produce a satisfactory mineral tonnage.

From Garrison westwardly to Missoula the company runs through what is known as the Hell Gate Mountain, which is not in itself a very productive piece of territory, but this part of the road is a very fine piece of railroad that has just been double tracked with low grade, and which is the throat, so to speak, of all business that moves between a point west of Missoula, Montana, and east of Garrison, Montana.

Missoula is a very thriving, growing city, in the Bitter Root Mountains, and at that point the company has two very valuable pieces of property—one known as the Bitter Root branch, running some 60 to 70 miles south, into a valley where there is a large amount of production from irrigation, and from natural farming, also a large amount of timber. Westwardly we have a branch into what is known as the Coeur d' Alene mining region, where we have large tonnage of mineral, considerable lumber, and this branch now is also used in connection with the newly constructed piece of railroad as an alternate main line, meeting the older main line of the company at a point called Paradise.

From Missoula westwardly the old main line goes over a spur of the Bitter Root Mountains, on rather a heavy grade, and through the Flathead mineral reservation to this point Paradise, where this last described line meets it. The reason for building the last described line was to avoid this heavy mountain climb, and the construction of that piece of railroad enables us, in part, to have this favorable profile for the movement of transcontinental freight.

The road runs from this point Paradise to Spokane mainly in the drainage of the Columbia river. That is to say, it follows down the Clark's Fork of the Columbia, but through a region where there is not a high development at all points where there is considerable timber business, some mineral, and a pretty steady growth of the production of fruit.

Then the company approaches Spokane, which is in the center of what is commonly known as the Inland Empire—a very productive portion of the United States. It, roughly speaking, is bounded on the north by the Canadian boundary, on the south by the Snake and Clearwater rivers, on the west by the Columbia, and on the east by some of the outlying spurs of the Rocky mountains. In that so-called inland empire are the most productive wheat areas in the country, very fine fruit valleys, a great deal of timber, and considerable mineral. The company's property in Spokane cannot be equalled by any other carrier, and could not be equalled by the Northern Pacific if they should attempt to obtain them now.

Radiating from Spokane the company has one branch westwardly through the wheat fields in what is known as the Big Bend country, and southwardly branches going through the famous wheat growing country, and down into the Clearwater valley, up the Clearwater and up onto this prairie back of Lewiston, all of which country, to-day, is producing grain, some fruit, timber, and some mineral. The main line of the company runs southwesterly from Spokane to Pasco through a region which is very largely in wheat, although 10 or 15 years ago it was thought wheat would not grow there; but a large part of the country tributary to that main line now produces very good crops of wheat.

At Pasco the company crosses the Columbia river and runs northwesterly to the base of the Cascade mountains, going through the Yakama valley, which is one of the best and most productive of the irrigated valleys in the country. There are in that valley approximately 500,000 acres of land, which are either under water now, or that can be put under water from the irrigation schemes which are now under consideration. The company's lines lie in the Yakama valley in such shape that they get a maximum portion of the production of the land, that is now under irrigation, and they are so situated that branches can be built, when necessary, into other irrigated areas, as the fruit raising develops.

After reaching the base of the mountains the company passes through a very productive coal field, which coal, how-

ever, is used quite largely for the company's own purposes, although there are several producing mines on the east slope of the Cascade mountains, which furnish fuel as far east as Spokane, Walla Walla and Lewiston.

Diverging southwesterly from Pasco the company has a number of branches over towards the base of the Blue mountains, going through what is known as the Walla Walla district, which is a great wheat belt, with a great deal of irrigated lands in the river valleys—a most productive area in the way of tonnage of wheat, fruit, and the consumption of merchandise and manufactured articles.

After crossing the Cascade mountains, the company drops down on the west slope and reaches every Pacific coast and Puget Sound point of any importance. It has branches to other coal mines on the west slope of the Cascade mountains, some of which it owns, and many that are owned by private parties, and it has a large coal tonnage for its own use and for the growing communities that are west of the mountains. Its branch lines in Western Washington also go through as good a lumber and shingle producing territory as there is in Western Washington. Its terminal facilities and general position in Seattle, for the purpose of doing business, are unexcelled, and could not to-day be duplicated. The same thing may be said of Tacoma. The company is also very well located at the growing city of Everett, at Bellingham, and on its line from Seattle northwardly toward the Canadian boundary, the road goes through a good lumber producing country, which, as the lumber is cut off, is developing agriculture in a very successful manner.

Southwardly from Tacoma the main line of the company runs to Portland, passing through a good country where there is fruit, timber, some general lumbering, some manufacturing; and at Portland the company has a good position in the way of facilities and commercially. The company is so situated that it is in a position to furnish a transportation machine for transporting people back and forth through all the states, beginning with Wisconsin and ending at Oregon, which is unexcelled.

It is also in the same position for the exchange of commodities, that if the people in those states may wish to sell to people in other states, or may wish to buy from people in other states. The company has along its line a majority of the good towns that have developed in the last 25 to 40 years in the various states, and on account of its position in being the pioneer transcontinental road in this part of the

country the growth of business in those various towns has been about the rails and about the terminal facilities of the Northern Pacific. For example, the state capital of a number of the states is on the line of the railroad, showing that population is rather tributary to our company. A great many of the state colleges are at stations of the Northern Pacific. At Bozeman, a very fine agricultural college; Missoula, the State University of Montana; Moscow, Idaho, the State University of Idaho; Pullman, Washington, the agricultural college; Walla Walla, Washington, the largest private university in the state; Olympia, the capital of Washington, is on the company's rails; at Fargo, the state agricultural college. Of course, at St. Paul and Minneapolis we have centered here, and divide naturally with other companies, the influence of the great aggregation of population here; but we have, what I call, the basic elements for a successful railroad to a marked degree, namely, a railroad with a good profile for transporting business on its main line.

Secondly: the occupation of a territory that contains today a good population and which has all the elements that will support a constantly increasing population. We have the best educational facilities immediately upon our line, or very close thereto, in all the states through which we go, so that those who are more or less successful in life are in a position to care for their families in a wholesome and satisfactory manner. We have raw material in the way of lumber and coal in a very marked degree. We have very fine agricultural areas tributary to our road in every state through which we run.

Then, we have an element which no new road could possibly have, and that is a reputation which has been established by long years of honest effort on the part of the officers and employes of the Company to place its advantages before the traveling and shipping public and before the business men. The company has spent, since about 1880, I think it is, nearly nine millions of dollars in advertising and exploiting itself before the American public. That means it has extended a knowledge of its existence to a constantly widening circle of people.

The Company also has a development of markets, which means a great deal to the business man living upon or near its rails. Through its half ownership in the Burlington and its controlled roads it places all of the producers on the Northern Pacific in most favorable connection with the great consuming and producing population in the states in the Missis-

sippi valley, and in Colorado, and as far south as Galveston, Texas.

That idea of markets is a very important one and means a great deal in the value of a railroad, because a man who is going to saw lumber naturally wants the widest market he can get to sell his lumber. The Northern Pacific gives it to him. If he is producing fruit, he wants the widest market in which to sell his fruit. The Northern Pacific gives that to him.

The location of the Northern Pacific also is, on the whole, extremely well devised to serve the states through which it runs, now and in the future. With its main base lines east and west across the country, it is in a position to add to its property with lateral lines and branches in such a way that it will serve a constantly growing country and protect, not only its main line, but open up new areas where people can live and produce and consume.

Now, the only way a railroad can live at all, of course, is to have as many people as possible who are making use of the railroad, either by traveling or by producing something that is shipped or by consuming something that is shipped. I claim the Northern Pacific is in a peculiarly strong position to furnish to the future a territory where there will be a very large use of its rails by people who will travel, who will consume and who can produce.

There is one other element that is important in any business enterprise, in considering its value, and that is that, since the receivership—I cannot speak before that—there has been a consistent and harmonious management in the Northern Pacific in its effort to realize its responsibilities in trying to serve the public fairly and faithfully, believing that by so doing it would better serve its owners; and I think I am safe in saying that the Northern Pacific has established a reputation in the territory where its rails are and in other parts of the country where it seeks business; that it has established a reputation for fair dealing, for reasonable and careful treatment of its patrons, and for reasonable and satisfactory service. That, in itself, is an element of value which is of great value. You cannot measure it in dollars and cents, but it is an element that no new railroad, even if it had all the physical advantages that the Northern Pacific has to-day, could acquire. We have, as I say, spent something like nine millions in placing advantages of our railroad and our country before the American public. We have spent 12 years in an honest endeavor to serve the shipping and traveling public reasonably

well, and have established this reputation for reasonableness and honesty in our dealings.

Now, all any business man can expect in these days, when most everything is equal, is a preference from the intending customer, assuming that your rates and service are as good as those furnished by others. We claim our rates are equal to those furnished by others. We claim our service is, if anything, a little better than that furnished by others, and we believe we have a very large preference in a great many sections of the country which we serve. We have, I believe, what lawyers and doctors call "seconds". If a doctor treats his patient well, why, that patient recommends that doctor to someone else, and his business grows. Now, we have a very large number of "seconds" and "thirds" and "fourths" all over the United States, not only in our own territory but in outside territories. So I should say that, strategically, territorially, physically and in a commercial way, our position is such that our property is far more valuable as a business enterprise and as a going concern to-day than it would be if it was created and turned over to anyone to start in and begin to do business, even with the splendid facilities that would be handed to the management at that time.

Q. Now, speaking of the value that it has, Mr. Elliott, by reason of its being the pioneer line: You referred in your testimony in the Minnesota rate case to the Milwaukee road as an illustration of the advantage that accrues to such a line. I wish you would just explain wherein that advantage lies.

A. Well, that is a very well known example in this part of the country. Those who have lived here longer than I could testify better about it; but it is well known that the Milwaukee and St. Paul was the pioneer passenger line between Chicago and the Twin cities, and their crack train, I believe they call the "Pioneer Limited." They have always given very good service, indeed, prompt, regular, good railroad, and they have had the cream of the passenger business between the twin cities and Chicago for a great many years. Following that, they have had a very liberal patronage of the freight business moving between Chicago and the twin cities. Other roads have come in, very good ones—the Chicago & Northwestern, C., B. & Q., Rock Island and others, and they have all worked hard for this same business. But, in spite of all the hard work that the other roads have done, and in spite of the fact that to-day, physically, those other railroads will give the intending passenger, or the intending shipper, just as good rates, and just as good service as the Milwaukee & St. Paul will, the accumu-

lated advertising, the accumulated commercial momentum of the St. Paul road attracts to it a more liberal portion of the Chicago-Twin City business than any of the other roads. They are all making very earnest efforts all the time to get an increasing share, but the Milwaukee & St. Paul rather is the preeminent line, and not due to-day to the fact that they are any better, but due to the fact that people know all about it. Right here in St. Paul many of my personal friends—people who naturally desire to be friendly to me, and who knew I was on the C., B. & Q. and that the road I now represent is interested in the C., B. & Q.—I say to them, "How are you going to Chicago?" "Well, I am going over the St. Paul." "Why don't you go over the C., B. & Q.?" "Well, I like the C., B. & Q. but always have traveled on the St. Paul and will keep it up." It is merely that knowledge that accumulates with years, and the incoming railroads have to get it from a growth of younger people who come up who do not have the past history to influence them. Now, the Northern Pacific has a very strong asset in that very idea. People are accustomed to use the railroad between the East and the West, and it means a great deal, because, while the passenger business in itself is of doubtful net value, it is of value in that people who travel on their road become acquainted with the country, the chances of doing business, and, as I have already said, the only way we can succeed at all is to have the maximum population upon our road, who will travel, and who will produce something, and who will consume something; so everything we can do to increase population along our rails we want to do.

Q. Calling your attention, Mr. Elliott, to item No. 33 on the first page of Mr. Darling's exhibit, the item "Contingencies"—you will observe there that he takes 10 per cent. of the sums represented by the 32 preceding items, making a total of $41,639,747.50, which he allows for contingencies. In view of your familiarity with the Northern Pacific and of your railroad experience, what have you to say as to the necessity of an allowance such as that for the reconstruction of such a system as the Northern Pacific Railroad, for contingencies in its reconstruction?

A. I don't know, of course, the mental process by which Mr. Darling arrived at his results. I feel quite confident, however, from my experience, that an item of 10 per cent., to cover unforeseen expenses and unexpected events in the construction of a large piece of property, as large as is described in this exhibit, is not, in my judgment, too high. I should be inclined to think it was too low.

Q. Have you any specific instances in mind, Mr. Elliott, of the construction of pieces of road of the Northern Pacific during the period that you have been the executive head of the road, where an allowance of some such amount as that has been found to be inadequate in actual experience?

A. Yes, sir.

Q. I wish you would just give those instances.

A. This road that you call the Lewiston Road, which is built from a point not very far from Lewiston up onto the plateau country some 2500 feet above Lewiston, is a very striking instance of that. That road was talked about probably 10 years ago, and some four years ago a decision was reached to construct it. A great many surveys had been made from the Clearwater valley up the different canyons which gash the plateau, to reach the top of it, and the engineers made very thorough examinations of various routes, and finally one was selected which it was thought was the best, and a calculation made as to what the 60 miles of railroad to reach the plateau would cost. That 60 miles had to get up in the air about 2000 feet. The estimate for building it was, in round figures, as I recollect it, $2,200,000, and the work was authorized and begun. When it came to construction we found, what we had not expected to find, that there was a very much greater proportion of rock than had been supposed in examination of the surface of the soil and of some of the outeroppings which gave the engineers the impression upon which they based their estimates that the rock was not very close to the surface; but, as a matter of fact, when we began to build that railroad the amount of rock work went so far beyond our expectations that it increased the cost very largely. In addition to that, during the construction of the road labor was hard to get, and the work did not go on as rapidly as we thought it would when we started in, and we were in two wet seasons during the construction of that road. That fact increased the cost very largely. So, as a result, that particular piece of railroad, instead of costing $2,200,000, is going to cost us something over $3,500,000. That variation is very large; and you might say that we could have made a better estimate if we had spent more time in investigation, but we didn't think it was necessary to bore holes in the ground everywhere to find out how near the rock was to the surface. We made the usual careful engineering examinations, and made a great many of them, and used as much care as is ordinarily used in investigating, surveying and projecting a new branch line. But there is a case where various causes beyond

the control of the promoters of the enterprise increased the cost more than 50 per cent. The piece of work that I mentioned in my little talk about the company in general, between Missoula and Garrison, which is an important throat through which all our east and west business passes, is another illustration of the difficulties that confront us. That road was a single track railroad with considerable curvature, about 75 miles long, and with some little humps in the grade. Being such an important part of a through main line the Company decided they would spend the money necessary in order to double track it, and when doing that it was deemed wise and was wise to reduce the curvature, take out those humps in the grade and make it what you would call a first-class modern piece of double-track railroad construction. Very careful estimates were made of all of that work. The line runs through the Hell Gate valley, which is not a productive piece of country, and it was not thought that the right of way would be very expensive, but we found the right of way cost far more than anyone could have imagined till they got into the work of buying it. The price of labor had also gone up very materially since the time when we projected the improvement, and it was so important the company went ahead with it. My recollection is that the estimated expense for revising the old line, taking out the curvature, and the grades and adding a new track the entire distance, was three and a half million dollars, or approximately $50,000 a mile. In the spring of 1908, as those of you who live out in this country know, there were some quite unusual floods in the Rocky Mountains. The Hell Gate valley is near the head waters of the Columbia drainage, and there were very heavy rains that came in May, and the snow melted at the same time, so the water came down the steep slopes of the Rocky Mountains much more rapidly than is usual. This work of ours was not entirely completed, and the rip rap was not in place, and the water rose to a higher level and was greater in volume than was ever before known in the state of Montana—a new record. Theretofore, no one, even after the most searching examination, ever had any idea that there could be that volume of water at any one time enter the Hell Gate valley. The result was that our grade line was found to be too low and was destroyed in a great many places. That flood cost the Company, all-told, in physical damage, about $800,000. That piece of work, therefore, had to be reconstructed, and the grade line changed somewhat, and the damage done by this flood repaired, so that the 70 miles of railroad, double-track railroad, in good condition, with proper

protection against the water, proper bridges and so forth, instead of costing, as we thought, $50,000 a mile will cost us a trifle over $70,000 a mile. Now, in that case, a great deal of time was used in examining the flood records, the course of the water, the lateral streams, and in calculating clearances for all of our bridges, so that there would be adequate water way; but in spite of all of the care that we used, we did not provide for this contingency that arose, and which had never arisen before, with the result that the cost of that particular piece of work will run a million and a half dollars more than we originally thought it would. That is another marked case on a work of large magnitude, where it seems almost impossible to figure exactly what the work will cost.

Q. Now, in each of those cases, as I understand it, the estimate originally submitted had an allowance of some amount for contingencies?

A. Oh, yes. All of our estimates we put in this arbitrary sum of 10 per cent. I think it is rather a percentage that has grown to be used without much thought of revising it. In the old days they used 10 per cent., and 10 per cent. very often is enough on a small piece of work, but of late years it hasn't seemed enough on these large works.

Q. That is, 10 per cent. of all of these items is customarily allowed?

A. Yes. The United States government imposed upon us an obligation to rebuild a bridge at Duluth—a very important harbor at Duluth—and we had one swing bridge in the channel, but the government told us we must have two—one on what is called the Wisconsin side of the River, and one on the Minnesota side of the river. It was quite a big bridge. There is a great deal of commerce, as you know, going through there. So we made an estimate for a modern, heavy, first-class bridge to be put in the very best shape we knew how. The estimate, in round figures, was $486,000. When we got to rebuilding some of the piers and foundations, and doing this, that and the other thing, we found difficulties that were unforeseen, and were delayed more or less by the passage of trains and boats, and that bridge, instead of costing $486,000—it is just being finished now—will cost about $690,000.

Q. Take the Lake Park to Glyndon line. How did the actual cost of construction there compare?

A. The Lake Park-Glyndon work is right here in Minnesota, and was for the purpose of getting a low grade line between the Mississippi River drainage on the east, and the Red River Valley drainage on the west, and the old company

had what is called one per cent. grade in there, and we deemed it advisable to reduce that grade 16 feet to the mile, going east, and 25 feet to the mile going west; and that country was surveyed very thoroughly for two or three years to see if we couldn't get a low grade line for those 27 miles. After developing those lines we developed a great distance on a number of ultimate routes, and we decided we would go out of the Red River valley to the east on a long grade. I think the fill is something like six miles long there, and we have over a million yards to the mile in that fill; and there was a very heavy cut also. We took the earth out of the heavy cut and put it on the prairie to make this fill. Everything went along very nicely until the work was approaching completion, when it turned out that the weight of this fill on the prairie began to force a settlement. We then began to make an investigation by a very careful series of borings, and we bored a great many holes all over that country, and found that there was an old deserted bed of the Buffalo River some 50 or 60 feet below the surface of the ground, which old bed of the Buffalo River was filled with a more or less soft clay, that seemed to compress under this unusual weight that was upon the top of the prairie, and there was a great sinkage there, in some places as much as 30 feet. The result of that was that the Company had to spend a very large amount of money in three ways: First, they had to trestle across this sink-hole, which was several thousand feet long; second, they have had to put in a great many more yards of dirt than ever was contemplated in the original estimate; third, it has had to put an apron of earth out over the prairie beyond the base of the fill, as a sort of a counter-balance. Now, the critic might say that the Company should have bored these holes beforehand; but it never occurred to anyone that this prairie, which seemed as firm and rigid as a pavement, would not support a fill even of that size; and we made our estimates of quantities very carefully, and the length of haul, and all that, and brought in the figures showing an estimated cost of that work of $2,200,000. Up to the present time, or March 31, 1909, the company has spent on those 26.83 miles of new railroad, new adjustment, $3,324,000, and there is still quite a bit of work to be done. I merely give that illustration to show that the estimate of 10 per cent. for these unusual and unforeseen contingencies is often entirely too low.

Cross-Examination by Mr. Teal.

Q. Mr. Elliott, just take up that question of contingencies. I don't think, from your answer to the question, that you, evidently understand how this statement was made up. Now, just to illustrate, I will take one from the Great Northern. There was an estimate made on the cost of a certain tunnel, which estimate was considerably in excess of its actual cost. The produced details of actual cost, which included the hospital expenses, expenses for the injured, and every possible expense account—Now, I understand the Northern Pacific's statement is made up the same way; that is, it is made up from the actual figures. For instance, the very illustration that you give of this Minnesota road which costs so much more was in the estimate with all of that cost and all of that extra expense. Now, do you think, under such circumstances as that, where figures are used that way, that 10 per cent. should be added, when every contingency is already covered?

A. Of course, I don't know the exact method adopted to make up that statement, but I am assuming that if a party of gentlemen got together and made an estimate of what they think it would cost them to reproduce the Northern Pacific road in its present condition, and used the very best expert talent that they could get, and they produced a figure of so many hundred million dollars for reproducing such a piece of property, and then added 10 per cent. for unexpected conditions—excessive right of way, or strikes or floods, or anything else of that kind, or interference by other railroads, I then think that 10 per cent. would not be too much to add.

Q. But where an estimate is made which has covered all these things, and not only covered all of these, but the estimate is far in excess of what the actual cost was, after adding those, you wouldn't still add another ten per cent., would you?

A. I say I don't know the estimate is made on that basis. I don't know anything about how it is arrived at.

Mr. Donnelly: You don't mean to say, Mr. Teal, that these figures in the first 32 items profess to represent actual cost of construction of any particular line?

Mr. Teal: No; I think that they represent an excessive cost, and more than that cost to the Northern Pacific, as demonstrated by what the witnesses themselves have testified to.

The Master: Take, for instance, the illustration with reference to quantity and character of a cut or a fill, that they found rock where they thought they would find loose dirt:

Now, as I understand it, in Mr. Darling's estimate, the exact situation has been taken in his estimate as to that matter?

Mr. Teal: Absolutely. Absolutely. There is no question as to that.

The Master: So far as those kinds of illustrations go, that wouldn't be, I shouldn't think, a perfect one.

Q. Now, Mr. Elliott, passing that. As I understand you, the Northern Pacific railroad is, in your judgment, the best located road through the section it operates in, has many and warm friends, and has a very large and productive business, is that correct?

A. Yes, sir.

Q. It also was the pioneer road through all of this country?

A. Yes, sir.

Q. Now, I would like to ask you just a few questions on one line, so that I will not be mistaken. Do you consider that your business in Minnesota, done by the Northern Pacific, pays?

A. I will have to answer your question first by asking you a question: You mean the business that the railroad transports on its railroad in Minnesota?

Q. Yes.

A. Yes, sir.

Q. And do you consider the local business pays?

A. No, sir.

Q. Now, we will take Dakota. Do you consider the business that the railroad transports on its road in Dakota pays?

A. Yes, sir.

Q. Do you consider the local business pays?

A. Yes; I think we have some margin of profit on the Dakota business.

Q. Now, as to Montana?

A. The same.

Q. And as to the state of Washington?

A. The same.

Q. Do you think the local business there pays?

A. Yes, sir.

Q. In Idaho it is the same, isn't it, too, although you haven't much mileage there?

A. We have very little local business in Idaho. I shouldn't be willing to say that we made anything out of the Idaho business.

Q. But in Washington, you have already answered?

A. Yes, sir.

Q. Taking the entire business of the road, as a whole, since

the reorganization, it has been of a continuous and steady growth, has it not?

A. Practically. We have had some ups and downs.

Q. Yes, I know, but substantially during that period?

A. Yes, sir.

Q. And the business, as a whole, is remunerative, is it not, Mr. Elliott?

A. The business as a whole has paid us more than it cost us to do it.

Q. Well, but let us get that a little more definite then. It has paid you sufficiently to pay dividends on your road during practically all that time, hasn't it?

A. We have paid some dividends all that time.

Q. You paid 7 per cent—I am not trying to catch you.

A. I understand.

Q. You paid 7 per cent. for four or five or six years, haven't you?

A. Paid it, I think, for at least five years.

Q. You paid interest on your bonds?

A. Yes, sir.

Q. Maintained your road?

A. Yes, sir.

Q. And have gone along in pretty good shape, haven't you, Mr. Elliott?

A. Fair shape.

Q. During the period from the reorganization down to date, taking that as a starting period, we will say 1897, as compared with to-day, your road-bed is in far better shape, isn't it?

A. Yes, sir.

Q. There are far heavier rails over the entire system, aren't there, taking it as a whole?

A. Taking it as a whole, the weight of our rail is heavy.

Q. The grades are very much less, taking the road as a whole?

A. On the main line?

Q. Yes, on the main line.

A. There isn't much improvement. There is no change on the branches.

Q. I mean, taking on your main line. Your cars are much larger than they were in 1898, larger capacity?

A. The average capacity of our box cars is bigger than it was in 1898. We still have a good many of the old cars.

Q. And the average traction power of the engines is much heavier?

A. Yes, sir.

Q. In other words, in every element that goes to make up operating, your ability to perform the same service to-day for less money than you could in 1898, is apparent throughout the system, isn't it?

A. Yes, sir.

Q. And for hauling—taking now a car as a unit—that is, the earning capacity of a car as a unit—it will average very much more now than it did five or six or seven or eight years ago, will it not?

A. I should doubt that.

Q. You don't think, then, that the loading capacity of the cars has increased on your system?

A. Yes, sir.

Q. Well then, they could carry a heavier load?

A. Yes, sir.

Q. And given the same rate of freight that existed eight years ago, that car would earn more money?

A. Yes, sir; under those conditions.

Q. There has been a constant increase of a train-load, has there not?

A. Pretty steady. We have improved it every year a little.

Q. And there has been a constant increase in the length of haul, has there not?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. What is the average haul on your system?

A. In February it was 280 miles. I don't remember what it was last year. The length of haul has been decreasing a little in the last year.

Q. This question of the length of haul enters into the question of a road very materially, doesn't it, Mr. Elliott?

A. Yes, sir.

Q. That is, you take a short haul and put on a low rate for a few miles, the terminal charges might absorb the whole thing, mightn't they, and you wouldn't get even any return for hauling it?

A. You mean the earnings on the car?

Q. Yes, the earnings on that car?

A. You mean that the terminal charges would be so great that what you receive for transporting the car would not be

enough to pay the terminal charges and something for hauling, both?

Q. Yes, that is what I mean.

A. That might happen; yes, sir.

Q. But as the length of the haul increases, of course, the proportion of terminal charge to the haul decreases, does it not?

A. Yes, sir.

Q. Now, there is also another element which enters into the question of the percentage of cost of operating to receipts. For instance, when we speak of cost of operation we generally refer to the ratio of the cost of the receipts to the entire gross earnings, do we not—I mean the cost to the gross earnings?

A. If I understand your question, what we call the ratio of cost operation is the proportion that the total we have to pay out to maintain and operate your railway bears to the total you receive from transporting freight, passengers and maintenance.

Q. Now, a low percentage of operating cost can be reflected in high rates if the business is done, as well as reflected as the result of economical operation, can't it?

A. Well, I wouldn't want to testify as to the equality of them. Both elements would enter into the ratio. I wouldn't say that one was equal to the other.

Q. Now, the density of traffic on your line has increased very very materially in the last eight or ten years, has it not, per mile of road?

A. It is much more to-day than it was 8 or 10 years ago; yes, sir.

Q. And your freight earnings per mile of road have also increased very very much, have they not?

A. They increased up to a year or so ago. They have been showing decreases since then.

Q. Well, that was owing to the general condition of affairs; but I mean take this period over which we are speaking, commencing with the year 1897; take the 10 year period.

A. Yes, sir; our freight earnings per mile of road are very much more now than they were in 1897.

Q. I mean per mile of road.

A. Per mile of road; yes, sir.

Q. Now, in the question of rate making I suppose the following factors enter into a rate a given article should pay:

its volume—its bulk and weight has a good deal to do with it, has it not, Mr. Elliott?

A. Yes, sir.

Q. And its value?

A. Yes, sir.

Q. And the risk?

A. That is correct.

Q. And the facilities required?

A. Yes, sir.

Q. The rapidity of movement?

A. Yes, sir.

Q. And the length of haul?

A. Yes, sir.

Q. And the terminal cost?

A. Yes, sir.

Q. Those are all elements, are they not?

A. Yes, sir.

Q. Now then, you take any article or commodity in which the shipper loads it and the consignee unloads it, so that it doesn't have to pass through terminals, nor pass through the warehouse, or anything of that kind. To that extent those facts are entitled to consideration in making a rate, are they not?

A. Yes, sir.

Q. What commodity on your road, that you carry, will come nearer reaching the substantial capacity of a car than lumber?

A. Coal.

Q. What else?

A. Ore.

Q. What else?

A. Grain.

Q. What else?

A. Well, various iron articles, stone, sand.

Q. That is substantially all, isn't it?

A. Logs, of course.

Q. Well, I know; but that is a raw product that I don't think you make much money out of hauling.

A. I agree with you.

Q. Well, it is a raw product that you haul to the mill. But a lumber car, or rather, lumber loading, is quite up to the capacity, is it not?

A. No, sir.

Q. It is not?

A. No, sir.

Q. Would you say that loading carloads of lumber, that that is not a heavy loading article?

A. No, sir.

Q. It is not?

A. Excuse me. I don't think you got my answer right. You asked me if I would say it was a heavy loading article, and I answered "No, sir." We consider it a heavy loader, but it is not loaded to the capacity of the car, except in rare instances. Very rarely you get 80,000 pounds of lumber in an 80,000 pound car.

Q. Would you say it costs any more to handle lumber than it does coal, wheat, and articles like that?

A. Well, under exactly the same conditions I would say that it would.

Q. There are substantially no terminal charges on handling lumber, are there?

A. Yes, sir.

Q. What are they?

A. Well, we have to gather up lumber at a good many outlying points, north of Seattle, to pay expenses of doing the lumber business, or a very considerable. We do kind of a switching business there, picking up a car of lumber here and a car there, and have to bring it into Seattle, classify it, sort it out. The same thing is true on the Gray's Harbor and South Bend branches.

Q. Generally speaking, those cars are loaded at the mills, are they?

A. Yes, sir.

Q. And when they are brought to their destination, generally speaking, they are unloaded in the lumber yards, are they not?

A. Lumber yards, or at some manufacturing establishment.

Q. Yes, that is what I mean. They are certainly not passed through the sheds and passed through and unloaded as you handle less than carload freight, are they?

A. No, sir; but we have got unloaded right out here at Minnesota Transfer, at our own expense, I believe—I am not certain as to that—a very large amount of shingles, piled on very valuable ground.

Q. Yes, I noticed that the other day. But is that the way lumber is usually handled over your road?

A. No, but it is an incident to the business. We are using up some very valuable ground there for the benefit of the lumber.

Q. What would that ground be used for if those shingles weren't there?

A. I don't know.

Q. I didn't think so, Mr. Elliott.

A. Well, it is valuable ground, just the same. If we didn't own it, the lumbermen would have to go and provide it.

Q. Do you think that is a serious consideration, just at the present time, that those shingles are out there on that ground?

A. No. A consideration.

Q. Now, in view of the fact that there have been a good many figures gone into as to the cost of reproduction, I would like to get your ideas, because there must be some reason for all this. To what extent do you think the cost of reproduction enters into rate making?

A. I don't think it has anything to do with it at all.

Q. To what extent do you think the cost of construction has to do with rate making?

A. Very little.

Q. To what extent do you think the capitalization has anything to do with rate making?

A. Nothing at all.

Q. You and I quite agree. In other words, if it came to a question of reproduction, like on the New York Central, Lake Shore, and Michigan Central, it would be almost impossible, wouldn't it, to sit down and make out a reproduction cost on such roads as those? Wouldn't it, really, to put it mildly, appall one?

A. Let me hear that question?

Q. I say the reproduction cost would probably appall one, if it could be reproduced at all?

A. Oh, I think so; yes, sir.

Q. Another thing I would like to get your idea about: You know the Des Schutes Road, the building of which is now being spoken of, from the Columbia River into Central Oregon, under present conditions will have to run up through the canyon, will it not?

A. I don't know that country, Mr. Teal.

Q. You don't know the Des Schutes Canyon?

A. No, sir.

Q. Well, let us assume that it would. Now, application

has been made to the government for right of way, as it runs nearly all over government land. There is room in that canyon for but two roads at the outside. This right of way, if granted, will cost them nothing. Now, in the revaluation and reproduction of that road for rate making purposes, to what extent should that condition, or the value of that right of way be considered?

A. I think they ought to consider the fair value of it as a right of way.

Q. As a right of way?

A. Yes, sir.

Q. Regardless of how they acquire it?

A. Yes, sir.

Q. Regardless of the fact that the public donated it?

A. Yes, sir.

Q. And of course you feel the same way about all of the right of way of the Northern Pacific that was donated?

A. Yes, sir.

Q. About the terminals in Spokane that you spoke of?

A. Yes, sir.

Q. And you think that no consideration should be given to the fact that that right of way was a gift from the public?

A. I think no consideration should be given to that fact, because it was given by the public for a consideration, namely, to induce someone to take the risks of going into business.

Q. Taking this proposed method of reproducing the Northern Pacific railroad: You are familiar with the method used, I presume, are you, Mr. Elliott?

A. In a general way; yes, sir.

Q. I will ask you now, if you ever knew of a railroad planned or built in that way, in your experience as a railroad man?

A. No, sir; railroads have grown like Topsy. They begin to make little pieces at a time.

Q. That is the way railroads grow. I want to ask you this: The latter part of last year, or during 1908, or 1909, did the coal company in which the Northern Pacific Company is interested, pay a dividend amounting to about $17,000,000?

A. Not the coal company; no, sir.

Q. What company did?

A. The Northwestern Improvement Company.

Q. When was that paid?

A. That was paid, I think, in November, 1908. I can give you the exact date, if you want it.

Q. I do, and the exact amount, please.

A. The dividend was $17,453,000, payable on December 3, 1908.

Q. And it was paid, was it not?

A. Yes, sir.

Q. And the Northern Pacific Railway Company, do they own all of the stock of that concern?

A. Yes, sir.

Q. Now, Mr. Elliott, I notice amongst the treasury securities here, $2,775,000 of Northwestern Improvement Company stock, valued at $2,775,000 as of June 30, 1908. Is that the stock that you refer to?

A. Yes, sir.

Q. As a matter of fact, at that time that stock was worth about $17,000,000 more than shows on your balance sheet, wasn't it?

A. Well, the Northwestern Improvement Company had assets in its box sufficient to pay $17,000,000 and whatever it was I said. You can put a value on the stock of anything you want to.

Q. As far as the public is concerned, or as far as your stockholders were concerned, could they have taken your so-called balance sheet and ascertained the value of that stock?

A. No, sir; I don't suppose it could. I don't know if they could have made the value of the stock even if they had all the other information.

Q. Even if they knew $17,000,000 was on hand?

A. They could form their own conclusions about the value; but there was no sale of the stock, there was no market for it.

Q. No, I understand that. Now, did that pay out all of the surplus of that company at that time, or is there still surplus?

A. That paid out practically all at that time.

Q. Where in that report is the ownership of it—Oh, I guess it is here—"Cost of securities in the hands of the trustee of the Burlington and the capital assets"—

A. I don't know what your question is.

Q. Does the item "Cost of securities in hands of Trustee, etc, 1,076,130 shares, C. B. & Q. R. R. Capital stock," represent your interest, or the interest of the Northern Pacific Railway Company, in the Burlington?

A. Yes, sir.

Q. If I understand correctly, the interest in the Burlington was acquired by the issue of joint bonds of the Great Northern and Northern Pacific Railway Company, was it not?

A. Yes, sir.

Q. And they, of course, guaranteed the interest on those bonds?

A. They either have to pay the interest, or they would lose the stock. The stock was put up as collateral for those bonds.

Q. And the Burlington, primarily of course, is responsible for that interest?

A. No, sir; the people who issued the bonds are responsible.

Q. That is true; but the Burlington is paying the interest in the shape of dividends on the stock?

A. The Burlington is paying to the stockholders a dividend on its stock.

Q. Now, does it pay any more in dividends than enough to pay the interest on the stock?

A. The Burlington is now paying an eight per cent. dividend on its stock, to the stockholders, chiefly the Great Northern and the Northern Pacific, and that eight per cent. dividend is approximately the same sum as is paid on these joint fours, as they call it. There are a few outstanding stockholders who get their eight per cent. dividend direct, as stockholders.

Q. In other words, the stock cost the Northern Pacific and Great Northern about two for one on the par value, did it not?

A. Yes, sir.

Q. Now, as a matter of fact, the earnings of the Burlington are very largely in excess of this 8 per cent. beyond par, are they not?

A. Well, they are in excess, or have been. I haven't looked at them for the last few months.

Q. But in this statement as to the earnings of the Northern Pacific, which is filed here, from all of its securities, no account whatever is taken of this equity in the earnings of the Burlington, in any way?

A. No, sir.

Q. So that it is quite immaterial whether that is a number of million dollars or not, it does not appear here in any way?

A. It does not appear in our balance sheet; no, sir.

Q. And that joint ownership in the Burlington is, accord-

ing to your reports, a very valuable asset of the Northern Pacific, as a business producer, isn't it?

A. We think so. It enlarges the market for our products and so forth, just as I tried to point out.

Q. Now, recently, or within the last year, the Burlington authorized an issue of mortgage bonds, amounting to about $300,000,000, didn't it?

A. They made a new mortgage, which, my recollection is, provided for an ultimate issue of $300,000,000.

Q. Do you know how many of bonds were issued under that?

A. No, sir.

Q. Do you know whether any have been issued?

A. Not of my own knowledge; no, sir.

Q. You are President of the Northern Pacific and own half of the stock of it, don't you?

A. Yes, sir; but I don't charge myself with the duty of watching all the financial operations of the C. B. & Q., because we have a number of directors on the Northern Pacific board and also on the Burlington board and they watch that.

Q. You don't know whether or not the Burlington has issued $18,000,000 in those bonds?

A. My impression is they have issued 15 to 18 million.

Q. Do you know whether that $18,000,000 was issued to take up accounts that had been charged to operating expenses of the Burlington?

A. I do not; no, sir.

Q. In other words, you don't know whether that was on a line with what has been termed the Alton deal or not?

A. Well, I don't know, but I am very positive it was not.

Q. In other words, that there is no capitalization of expense accounts?

A. I think not. I know a great deal about the very careful, honest, financial methods of the C. B. & Q., and they have been such from the start.

Q. Now, the Burlington also has large amounts of reserve funds and sinking funds, has it not?

A. I think it has; yes, sir.

Q. For its bonded debt?

A. Yes, sir; its annual report sets them all forth in a great deal of detail.

Q. Now, you spoke about this Spokane, Portland & Seattle, from Portland to Pasco, and was asked about whether that was paying or not. Now, that road was built, not only for local business, but also for the purpose of taking care

of through business on a more economical basis in carrying it over the mountains. Isn't that correct?

A. That was one of the purposes; yes, sir.

Q. And the road is just substantially getting in shape—well, it isn't even in shape yet—where it can handle traffic as it will handle it when completed, to Spokane?

A. We hope to begin freight operations there the 15th of May.

Q. Now, on the Grangeville line that you spoke of: That runs through very rich country, does it not?

A. Yes, sir; that is a fine wheat plateau there. They have about 49 inches of rainfall up there.

Q. And when that road is completed, and in operation, there is no reason why that should not be a very profitable piece of road, is there?

A. It all depends on what rates the Company can get for handling the products. There ought to be a large number of bushels of wheat produced and marketed from that section.

Q. And in-bound freight also?

A. Considerable in-bound; yes, sir.

Q. In connection with the building up of the Northern Pacific during the last 8 or 9 years, there have been very large amounts charged to maintenance of way and structures, and maintenance of equipment, which have gone into the operating expense account?

A. Yes, sir.

Q. And that, of course, then, appears as an operating expense of the road?

A. Yes, sir.

Q. And in addition to that there has been quite a number of funds created, has there not?

A. Yes, sir.

Q. And a reasonable surplus, or unreasonable, as people look at it?

A. Well, I should think I would say yes to that question.

Q. Have you any idea, after taking out all of the charges which are proper to take out from your income account for 1906 and 1907, what the earnings were on the stock of the Northern Pacific?

A. Not without going to the reports and making the calculation.

Q. Would you say they were more or less than 14 per cent. of the stock?

A. My estimate, without looking at the report, would be that it was about 14 per cent. for those two years, but I wouldn't want to say that absolutely without examining the figures in detail.

Re-direct Examination by Mr. Donnelly.

Q. Referring to the improvement of the railroad, Mr. Elliott, in the matter of the elimination of curves and improvement of grades, and the increased capacity of the equipment, I will ask you to state whether that improvement has been brought about without a very great capital expenditure?

A. No, sir; we have spent a very large amount of money for permanent additions, betterments and improvements of the existing railroad.

Q. Could you give approximately what amount that has been since the reorganization?

A. I could not, without going to the records. I can state that since I was president of the Company, that is five years, we have spent for new equipment, permanent additions and improvements, branch lines, acquisition of new property, in the neighborhood of $100,000,000; but I don't remember how much prior to that time.

Q. Then, in the matter of this carload traffic, Mr. Teal has called your attention to the fact that lumber is generally loaded by the shipper and unloaded by the consignee. Isn't that generally true of the traffic that is moved in carloads?

A. Very largely so.

Q. So that it is not special to the movement of lumber at all?

A. No, sir.

Q. You stated in answer to Mr. Teal's question that the value of the property, as such, had nothing to do with the making of a rate, but in determining whether the earnings and the operation give a fair return upon the value of the property, isn't it important to know something of that value?

A. Very. We wouldn't go into the business unless we were going to make money. But because the property was of a given value, we could not charge a higher rate than commercial conditions would justify.

Q. And an inventory of the value of the various items which go to make up a railroad property, then, is of importance in determining whether the road, as a whole, is earning a fair return?

A. Yes, sir.

Q. Now, considering your knowledge and the value of the system as it stands to-day, and its net earnings from operation, are you able to say whether the property at the present time is earning a fair return upon its value?

A. I don't think it is earning a fair return on its present fair value as a great business enterprise.

Q. Nor that it has during the last three or your years?

A. No, sir.

Mr. Walter: Well, ask him how long.

Q. Well, at any time since the reorganization.

A. Not since the receivership.

By Mr. Teal:

Q. You say that since you have been president you put in, in round numbers, $100,000,000 in extensions, improvements, and double tracking?

A. Equipment; yes, sir. Approximately that. That is my recollection. If you want the exact figure I would have to look up the statistics.

Q. I mean approximately.

A. Yes.

Q. That was new capital?

A. Yes.

Q. Now, at the same time there had been going in, from 1897, and are yet, many millions into the maintenance of way and structures, that went into the operation expense account also?

A. Yes, sir; we have tried to be what is called liberal with our maintenance of way, to keep the road in good order, and to keep our equipment in good order.

Q. And the result of that, of course, is reflected in the cost of operation, is it not?

A. Yes. If we have a good track and good cars we will, operate more economically than if we have poor track and poor cars.

Q. And those items that go into the operating expense account that way, are deducted, of course, from the revenue, in order to arrive at the net?

A. Yes, sir.

Q. And do you think that on the capital of this company, as invested, and as represented by its capital stock, it is not earning to-day a fair return?

A. On the capital alone we have earned a reasonably fair return in the last year or two. The question asked me by Mr. Donnelly was on what I considered the fair value of the property. Our property is under-capitalized.

Q. And then if the property, through the development of the business along the line, the settlement of the country, the increase of production, increases in value through an increase of income, then you think that you are entitled to a still higher return as that value increases?

A. Yes, sir.

Q. And then a constantly increasing business and a constantly increasing profit would furnish a constantly increasing reason for increasing rates, from your standpoint?

A. I didn't say that.

Q. Well, if it did not produce the return without raising rates, then you would believe it to be right, wouldn't you, so you could get your return?

A. I didn't say that at all. I think rates are not made based necessarily on valuation.

Q. Well, but you say the returns bear some relation to that.

A. I said this: that no one would go into the business of railroading unless he thought he was going to make a profit. But if one railroad is worth $1,000,000 and another railroad is worth $500,000, the $500,000 one makes a lower rate than the million dollar one. $1,000,000 one cannot get a higher rate. It can only get what commercial conditions will permit. You are asking me two kinds of questions, as I understand it.

Q. I will try to limit myself to one. Your objection is, as I understand it, that the basis of value of a road would probably be on what it could be capitalized at and its income; is that correct?

A. No, sir; I think the basis of value of the railroad is what is its fair value to reproduce it in its present condition.

Q. Then, its income would have nothing to do with it?

A. Not necessarily.

Q. So that whether its income was greater or less, or whether it was a paying road, or a road in the hands of a receiver, would make absolutely no difference in your opinion, as to the value of that road, whether it could be reproduced or not?

A. I don't think I followed that. Can you state it again?

Q. Well, you can take two roads, both costing the same money, one is in the hands of a receiver and the other is making money. What creates the value in those instances?

A. I don't know. One may be badly managed or badly located.

Q. Well, assume that it is badly located.

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A. Then it will fail, just as a badly located hotel would fail.

Q. Then the value of a railroad really depends not only upon the absolute cost of its construction, but on what it is able to earn, doesn't it?

A. Depends not only on that, but on the integrity of its management, and on its general history and ability to do business. Just like any other commercial enterprise, to my mind. You can have one good hotel on one corner of the street and another good hotel on the other corner. One of them will do a lot of business and the other won't. As pieces of brick and mortar they may be worth just exactly the same.

Q. Taking up that one feature of the railroad question: Do you look upon railroad property, and the handling of a railroad property, and its government and control, the same as an individual would look upon a hotel that he owned?

A. I do.

Q. In other words, you feel that that is just simply a private enterprise, in which the public have no interest and the government should exercise no control?

A. No, sir; I think the government has a perfect right to exercise a control. But it is a private enterprise, established for the purpose of making money, just as the hotel is established for the purpose of making money.

Q. To what extent do you think the control should be exercised?

A. I think they should avoid unjust discrimination.

Mr. Walter: And not the reasonableness of the rates?

The Witness: I think that should be taken care of by the ordinary competitive forces of business.

By Mr. Teal:

Q. Is there any such thing as competition in rate making to-day?

A. Yes, sir; every pound of freight, nearly, on the Northern Pacific is competitive to-day.

Q. And rates are made upon that basis?

A. Yes, sir.

Mr. Holden: We have completed the oral testimony, as at present advised, in our direct case. We propose, before resting, to offer portions, or in may be all, of the record taken before the Commission. I am not prepared at this time to make that offer, largely because of Mr. Dillard's necessary absence, and the fact that I do not represent his clients and do not desire to take a step of that kind, without a full consultation with him; and my suggestion is that at the next

sitting we will be prepared to close our case in chief in a very few minutes, and, with that understanding, I would suggest such adjournment as counsel for the other side may desire in order that they may be ready to proceed with their side of the case when we make the formal rest in our case in chief.

Mr. Donnelly: Mr. Teal, can you give us some information as to when and where you want to meet again?

Mr. Teal: We want to make this, as far as we are concerned, as brief as we can. Just as soon as I get this testimony, which is being sent on, I shall go over it, and then select the witnesses I want, and there will be very few. Mr. Watler will go at once to Washington, and submit the matter, of course, to the Interstate Commerce Commission, or the defendants, and they will have to determine to what extent they want to check up the question of valuations which have been submitted, and then Mr. Walter will advise us. As soon as we know that, we can determine.

Mr. Walter: My impression is we shall want to go very much into detail in this matter.

Mr. Holden: Can you give us any information about when you want to begin?

Mr. Walter: Well, if we do that, the men will go to work at once, and we can then let you know as soon as we determine that.

Mr. Teal: We can arrange for two weeks notice—will that be long enough?—before we commence to take testimony?

Mr. Holden: It will be. I would like to have a week or ten days.

The Master: Then, as I understand it, you gentlemen will agree on a time and place for the next hearing and let me know as long ahead as possible.

Adjourned subject to notice.

326 Federal Building, St. Paul, Minn., November 22, 1909.

The hearing was resumed before the special master, Frederick M. Dickson, at the above time and place.

Present: On behalf of the complainants, Mr. Hale Holden, Mr. Charles Donnelly, Mr. F. C. Dillard.

On behalf of the defendant, Mr. Luther M. Walter, Mr. W. A. Wimbish, Mr. J. M. Teal.

Mr. Holden: I am not sure whether I offered in evidence during the last hearing a statement of the earnings, operating

expenses and net income of the Great Northern line for the last five years.

The Master: I don't think you did.

Mr. Holden: I had a compilation made from the reports to the Interstate Commerce Commission, and the statement is for the years 1904 to 1908, inclusive. It is in seven sheets. I offer it in evidence, and ask that it be marked "Great Northern Exhibit A."

THIS PAGE IS BOUND VERTICAL IN BOOK

COMPLAINANT'S EXHIBIT "A" (G. N.).

GREAT NORTHERN RAILWAY LINE.

STATEMENT OF INCOME FROM OPERATION OF THE GREAT NORTHERN RAILWAY COMPANY AND PROPRIETARY COMPANIES, DURING THE FISCAL YEARS ENDED JUNE 30, 1904 TO 1908, INCLUSIVE.

GROSS EARNINGS FROM OPERATION.

	1904.	1905.	1906.	1907.	1908.
Per Reports to Interstate Commerce Commission:					
Great Northern Railway	$36,307,026.33	$39,577,726.70	$46,494,226.57	$50,208,035.10	$54,978,162.47
Willmar & Sioux Falls Ry.	1,489,707.28	1,646,370.91	2,020,978.72	2,038,193.28	.....
Duluth, Watertown & Pacific Ry.	131,322.35	108,170.68	158,862.86	177,426.06	.....
Montana Central Ry.	2,381,658.68	2,423,914.56	2,846,138.59	2,889,405.03	.....
Spokane Falls & Northern Ry.	649,986.26	716,183.76	811,819.66	931,353.44	.....
Washington & Great Northern Ry.	87,047.54	132,968.76	214,414.97	350,219.22	.....
Columbia & Red Mountain Ry.	52,446.30	36,706.74	23,453.59	25,573.21	.....
Minneapolis Union Ry.	298,417.89	307,951.25	290,664.09	294,794.35	.....
Duluth Terminal Ry.	34,412.61	32,172.95	37,591.17	45,876.09	.....
Kootenai Valley Ry.	7,894.79	6,883.36	23,203.48	22,096.10	11,132.88
Iowa & Great Northern Ry.	.....	.....	.....	.....	310,994.25
Minneapolis Western Ry.	.....	.....	.....	.....	49,099.72
Companies not Reporting to Interstate Commerce Commission:					
Minneapolis Western Ry.	58,119.48	57,881.84	59,882.05	49,597.65	.....
Union Terminal Ry.	.....	.....	23,995.01	86,988.67	.....
Bedlington & Nelson Ry.	537.02	1,162.05	4,366.21	1,991.48	807.11
Kaslo & Slocan Ry.	24,683.50	28,765.97	20,095.87	15,534.51	17,628.63
Nelson & Fort Sheppard Ry.	92,816.35	100,716.75	87,471.82	81,056.10	.....
Red Mountain Ry.	61,221.87	41,980.16	36,679.80	37,545.93	.....
V. V. & E. Ry. & Nav. Co.	27,434.62	89,952.22	238,519.44	264,274.22	.....
	$41,704,732.87	$45,309,508.66	$53,392,363.90	$57,519,960.44	$55,367,825.06

OPERATING EXPENSES.

	1904.	1905.	1906.	1907.	1908.
Per Reports to Interstate Commerce Commission:					
Great Northern Railway	$18,099,509.51	$19,154,402.66	$23,133,081.11	$29,446,866.30	$36,442,480.04
Willmar & Sioux Falls Ry.	1,091,781.71	1,014,220.99	1,157,282.82	1,363,633.78	.....
Duluth, Watertown & Pacific Ry.	74,448.11	52,857.02	79,071.70	108,669.94	.....
Montana Central Ry.	1,332,223.25	1,224,046.34	1,487,087.31	1,490,655.43	.....
Spokane Falls & Northern Ry.	410,754.74	388,021.72	447,935.26	551,904.72	.....
Washington & Great Northern Ry.	61,415.19	66,944.73	100,022.39	152,712.08	.....
Columbia & Red Mountain Ry.	44,760.26	30,713.04	26,024.49	26,876.78	.....
Minneapolis Union Ry.	97,086.51	106,636.96	82,286.08	86,890.01	.....
Duluth Terminal Ry.	15,073.64	13,661.43	18,985.78	28,447.34	3,466.52
Kootenai Valley Ry.	17,067.27	13,120.19	13,894.78	27,247.09	34,134.63
Iowa & Great Northern Ry.	.....	.....	.....	.....	239,112.97
Minneapolis Western Ry.	.....	.....	.....	.....	37,495.06
Companies not Reporting to Interstate Commerce Commission:					
Minneapolis Western Ry.	37,688.20	35,510.74	38,971.65	37,391.69	.....
Union Terminal Ry.	.....	.....	3,127.28	15,078.95	.....
Bedlington & Nelson Ry.	9,358.29	7,663.79	7,893.33	14,787.39	14,968.75
Kaslo & Slocan Ry.	41,751.73	56,890.91	34,821.10	37,398.14	50,196.15
Nelson & Fort Sheppard Ry.	97,011.41	95,984.27	99,829.65	127,920.10	.....
Red Mountain Ry.	50,096.98	42,115.81	37,856.77	35,194.38	.....
V. V. & E. Ry. & Nav. Co.	14,430.76	65,557.44	136,044.61	183,881.54	.....
	$21,494,457.56	$22,368,348.04	$26,904,219.11	$33,735,555.66	$36,821,854.12

TAXES.

	1904.	1905.	1906.	1907.	1908.
Per Reports to Interstate Commerce Commission:					
Great Northern Railway	$1,283,878.19	$1,384,988.26	$1,605,801.09	$1,882,699.31	$2,276,074.18
Willmar & Sioux Falls Ry.	75,222.44	71,129.41	102,367.43	97,705.26	.....
Duluth, Watertown & Pacific Ry.	6,841.60	6,600.22	8,776.41	8,482.30	.....
Montana Central Ry.	52,451.44	54,204.73	54,651.42	62,036.28	.....
Spokane Falls & Northern Ry.	32,190.43	27,601.92	29,042.43	36,185.24	.....
Washington & Great Northern Ry.	9,618.19	9,356.88	10,654.42	15,206.75	.....
Columbia & Red Mountain Ry.	1,095.24	1,621.88	1,621.88	2,014.20	.....
Minneapolis Union Ry.	1,095.90	1,126.13	1,183.44	1,037.21	.....
Duluth Terminal Ry.	.....	.....	.....	.....	.....
Kootenai Valley Ry.	4,991.96	7,402.86	4,541.94	4,074.98	5,783.45
Iowa & Great Northern Ry.	.....	.....	.....	.....	10,053.44
Minneapolis Western Ry.	.....	.....	.....	.....	2,051.62
Companies not Reporting to Interstate Commerce Commission:					
Minneapolis Western Ry.	1,741.20	1,738.83	2,666.39	1,983.91	.....
Union Terminal Ry.	.....	.....	3,012.00	12,579.16	9,447.56
Bedlington & Nelson Ry.	857.50	1,411.56	1,404.72	1,391.04	484.76
Kaslo & Slocan Ry.	1,412.08	3,284.71	2,749.80	3,448.00	3,448.80
Nelson & Fort Sheppard Ry.	3,024.60	4,904.40	4,904.40	5,691.78	.....
Red Mountain Ry.	618.39	982.00	982.00	1,387.28	.....
V. V. & E. Ry. & Nav. Co.	302.40	302.40	302.40	6,277.67	.....
	$1,475,341.56	$1,576,656.19	$1,834,662.17	$2,142,200.37	$2,307,343.81

OPERATING EXPENSES AND TAXES.

	1904.	1905.	1906.	1907.	1908.
Per Reports to Interstate Commerce Commission:					
Great Northern Railway	$19,383,387.70	$20,539,390.92	$24,738,882.20	$31,329,565.61	$38,718,554.22
Willmar & Sioux Falls Ry.	1,167,004.15	1,085,350.40	1,259,650.25	1,461,339.04	.....
Duluth, Watertown & Pacific Ry.	81,289.71	59,457.24	87,848.11	117,152.24	.....
Montana Central Ry.	1,384,674.69	1,278,251.07	1,541,738.73	1,552,691.71	.....
Spokane Falls & Northern Ry.	442,945.17	415,623.64	476,977.69	588,089.96	.....
Washington & Great Northern Ry.	71,033.38	76,301.61	110,676.81	167,918.83	.....
Columbia & Red Mountain Ry.	45,855.50	32,334.92	27,646.37	28,890.98	.....
Minneapolis Union Ry.	98,182.41	107,763.09	83,469.52	87,927.22	.....
Duluth Terminal Ry.	15,073.64	13,661.43	18,985.78	28,447.34	3,466.52
Kootenai Valley Ry.	22,059.23	20,523.05	18,436.72	31,322.07	39,918.08
Iowa & Great Northern Ry.	.....	.....	.....	.....	249,166.41
Minneapolis Western Ry.	.....	.....	.....	.....	39,546.68
Companies not Reporting to Interstate Commerce Commission:					
Minneapolis Western Ry.	39,429.40	37,249.57	41,638.04	39,375.60	.....
Union Terminal Ry.	.....	.....	6,139.28	27,658.11	9,447.56
Bedlington & Nelson Ry.	10,215.79	9,075.35	9,298.05	16,178.43	15,453.51
Kaslo & Slocan Ry.	43,163.81	60,175.62	37,573.90	40,846.14	53,644.95
Nelson & Fort Sheppard Ry.	100,036.01	100,888.67	104,734.05	133,611.88	.....
Red Mountain Ry.	50,715.37	43,097.81	38,838.77	36,581.66	.....
V. V. & E. Ry. & Nav. Co.	14,733.16	65,859.84	136,347.01	190,159.21	.....
	$22,969,799.12	$23,945,004.23	$28,738,881.28	$35,877,756.03	$39,129,197.93

NET EARNINGS.

	1904	1905	1906	1907	1908
Per Reports to Interstate Commerce Commission:					
Great Northern Railway	$16,923,638.63	$19,038,335.78	$21,755,344.37	$18,878,469.49	$16,259,608.25
Willmar & Sioux Falls Ry.	322,703.13	561,020.51	761,328.47	576,854.24	.....
Duluth, Watertown & Pacific Ry.	50,032.64	48,713.44	71,014.75	60,273.82	.....
Montana Central Ry.	996,983.99	1,145,663.49	1,304,399.86	1,336,713.32	.....
Spokane Falls & Northern Ry.	207,041.09	300,560.12	334,841.97	343,263.48	.....
Washington & Great Northern Ry.	16,014.16	56,667.15	103,738.16	182,300.39	.....
Columbia & Red Mountain Ry.	6,590.80	4,371.82	*4,192.78*	*3,317.77*	.....
Minneapolis Union Ry.	200,235.48	200,188.16	207,194.57	206,867.13	.....
Duluth Terminal Ry.	19,338.97	18,511.52	18,605.39	17,428.75	*3,466.52*
Kootenai Valley Ry.	*14,164.44*	*13,639.69*	4,766.76	*9,225.97*	*28,785.20*
Iowa & Great Northern Ry.	.....	.....	.....	.....	.....
Minneapolis Western Ry.	.....	.....	.....	.....	9,553.04
Companies not Reporting to Interstate Commerce Commission:					
Minneapolis Western Ry.	18,690.08	20,632.27	18,244.01	10,222.05	.....
Union Terminal Ry.	.....	.....	17,855.73	59,330.56	*9,447.56*
Bedlington & Nelson Ry.	*9,678.77*	*7,913.30*	*4,931.84*	*14,186.95*	*14,646.40*
Kaslo & Slocan Ry.	*18,480.31*	*31,409.65*	*17,478.03*	*25,311.63*	*36,016.32*
Nelson & Fort Sheppard Ry.	*7,219.66*	*171.92*	*17,262.23*	*52,555.78*	.....
Red Mountain Ry.	10,506.50	*1,117.65*	*2,158.97*	964.27	.....
V. V. & E. Ry. & Nav. Co.	12,701.46	24,092.38	102,172.43	74,115.01	61,827.84
	$18,734,933.75	$21,364,504.43	$24,653,482.62	$21,642,204.41	$16,238,627.13

OTHER INCOME.

	1904.	1905.	1906.	1907.	1908.
Per Reports to Interstate Commerce Commission:					
GREAT NORTHERN RY.					
Rent of Leased Lines	$119,750.74	$119,851.55	$123,823.52	$139,501.61	$ 30,112.15
Rent of Equipment	122,747.30	219,734.18	282,208.98	444,694.99	384,116.72
Miscellaneous Rents					189,523.70
Joint Facilities					294,982.88
Miscellaneous	11,313.00	145,602.53	54,216.20	24,354.76	
Total G. N. Ry.	$253,811.04	$485,188.26	$460,248.70	$608,551.36	$898,735.45
WILLMAR & SIOUX FALLS RY.					
Rent of Equipment	$ 1,968.87	$ 2,318.50	$ 4,855.50	$ 6,560.53	
Rent of Leased Lines				488.71	
Total W. & S. F. Ry.	$ 1,968.87	$ 2,318.50	$ 4,855.50	$ 7,049.24	
MONTANA CENTRAL RY.					
Rent of Equipment	$ 20,039.74	$ 29,172.35	$ 21,514.86	$ 41,157.13	
MINNEAPOLIS UNION RY.					
Material Premium Account	$ 63.63	$ 108.54	$ 357.71	$ 202.98	
DULUTH TERMINAL RY.					
Rent of Property					$ 30,699.67
Companies not Reporting to Interstate Commerce Commission:					
MINNEAPOLIS WESTERN RY.					
Miscellaneous	$ 8.06	$ 1.00	$ 80.56		
UNION TERMINAL RY.					
Rent of Property					$ 77,365.13
KASLO & SLOCAN RY.					
Miscellaneous Rents				$ 3,502.02	$ 60.81
NELSON & FORT SHEPPARD RY.					
Rent Equipment, Buildings, etc.	$ 67.91	$ 90.67	$ 82.88	$ 339.00	
RED MOUNTAIN RY.					
Rent Equipment, Buildings, etc.	$ 144.87	$ 142.45	$ 156.00	$ 649.79	
V. V. & E. RY. & NAV. CO.					
Rent Equipment, Buildings, etc.	$ 206.63	$ 317.52	$ 5,130.05	$ 66,583.52	
	$276,310.75	$517,339.29	$492,426.26	$728,035.04	$1,006,861.06

DEDUCTIONS FROM INCOME.

	1904.	1905.	1906.	1907.	1908.
Per Reports to Interstate Commerce Commission:					
GREAT NORTHERN RY.					
Rents Paid for Lease of Road:					
Duluth, Superior & Wn. Term. Co.	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00
Province of British Columbia, Frazer River Bridge	.....	9,303.18	15,000.00	15,000.00	.....
Joint Facilities	.....	.....	.....	.....	150,588.37
Miscellaneous Rents	.....	.....	.....	.....	3,509.39
Depreciation of Equipment	.....	.....	2,344,618.59	2,934,976.22	.....
Total G. N. Ry.	$ 20,000.00	$ 29,303.18	$2,379,618.59	$2,969,976.22	$174,097.76
WILLMAR & SIOUX FALLS RY.					
Depreciation of Equipment	.....	.....	$ 39,845.13	$ 37,116.38	.....
MONTANA CENTRAL RY.					
Depreciation of Equipment	.....	.....	$123,145.88	$110,881.69	.....
DULUTH TERMINAL RY.					
Fund for Renewal of Elevated Structure	.....	.....	.....	.....	$ 10,380.84
IOWA & GREAT NORTHERN RY.					
Rentals Paid	.....	.....	.....	.....	$ 28,657.49
MINNEAPOLIS WESTERN RY.					
Rentals Paid	.....	.....	.....	.....	$ 2,628.18
Companies not Reporting to Interstate Commerce Commission:					
MINNEAPOLIS WESTERN RY.					
Rentals Paid	$ 1,549.99	$ 2,077.09	$ 1,851.19	$ 1,851.08	.....
Depreciation of Equipment	.....	.....	862.22	862.22	.....
Total M. W. Ry.	$ 1,549.99	$ 2,077.09	$ 2,713.41	$ 2,713.30	.....
BEDLINGTON & NELSON RY.					
Rentals Paid	.....	.....	.....	.....	$ 4,038.00
Total	$ 21,549.99	$ 31,380.27	$2,545,323.01	$3,120,687.59	$219,802.27

NET INCOME FROM OPERATION.

	1904.	1905.	1906.	1907.	1908.
Per Reports to Interstate Commerce Commission:					
Great Northern Railway	$17,157,449.67	$19,494,220.86	$19,835,974.48	$16,417,044.63	$16,984,245.94
Willmar & Sioux Falls Ry.	324,672.00	563,339.01	726,338.84	546,787.10	.....
Duluth, Watertown & Pacific Ry.	50,032.64	48,713.44	71,014.75	60,273.82	.....
Montana Central Ry.	1,017,023.73	1,174,835.84	1,202,768.84	1,266,988.76	.....
Spokane Falls & Northern Ry.	207,041.09	300,560.12	334,841.97	343,263.48	.....
Washington & Great Northern Ry.	16,014.16	56,667.15	103,738.16	182,300.39	.....
Columbia & Red Mountain Ry.	6,590.80	4,371.82	*4,192.78*	*3,317.77*	.....
Minneapolis Union Ry.	200,299.11	200,296.70	207,552.28	207,070.11	.....
Duluth Terminal Ry.	19,338.97	18,511.52	18,605.39	17,428.75	16,852.31
Kootenai Valley Ry.	*14,164.44*	*13,639.69*	4,766.76	*9,225.97*	*28,785.20*
Iowa & Great Northern Ry.	.....	.....	.....	.....	.....
Minneapolis Western Ry.	.....	.....	.....	.....	6,924.86
Companies not Reporting to Interstate Commerce Commission:					
Minneapolis Western Ry.	17,148.15	18,556.18	15,611.16	7,508.75	.....
Union Terminal Ry.	.....	.....	17,855.73	59,330.56	67,917.57
Bedlington & Nelson Ry.	*9,678.77*	*7,913.30*	*4,931.84*	*14,186.95*	*18,684.40*
Kaslo & Slocan Ry.	*18,480.31*	*31,409.65*	*17,478.03*	*21,809.61*	*35,955.51*
Nelson & Fort Sheppard Ry.	*7,151.75*	*81.25*	*17,179.35*	*52,216.78*	.....
Red Mountain Ry.	10,651.37	*975.20*	*2,002.97*	1,614.06	.....
V. V. & E. Ry. & Nav. Co.	12,908.09	24,409.90	107,302.48	140,698.53	33,170.35
	$18,989,694.51	$21,850,463.45	$22,600,585.87	$19,149,551.86	$17,025,685.92

RECAPITULATION.

	1904.	1905.	1906.	1907.	1908.
Gross Earnings	$41,704,732.87	$45,309,508.66	$53,392,363.90	$57,519,960.44	$55,367,825.06
Operating Expenses	21,494,457.56	22,368,348.04	26,904,219.11	33,735,555.66	36,821,854.12
Taxes	1,475,341.56	1,576,656.19	1,834,662.17	2,142,200.37	2,307,343.81
Total Expenses and Taxes	22,969,799.12	23,945,004.23	28,738,881.28	35,877,756.03	39,129,197.93
Net Earnings	18,734,933.75	21,364,504.43	24,653,482.62	21,642,204.41	16,238,627.13
Other Income	276,310.75	517,339.29	492,426.26	728,035.04	1,006,861.06
	19,011,244.50	21,881,843.72	25,145,908.88	22,370,239.45	17,245,488.19
Deductions from Income	21,549.99	31,380.27	2,545,323.01	3,120,687.59	219,802.27
Net Income from Operation	$18,989,694.51	$21,850,463.45	$22,600,585.87	$19,249,551.86	$17,025,685.92

Accounting Department,
April 22, 1909.

THIS PAGE IS BOUND VERTICAL IN BOOK

Mr. Teal: Mr. Holden, in connection with this exhibit, I notice that the operating expenses are not separated so as to show what went for maintenance of way and structures and equipment, etc. It is just bunched—the whole operating expense.

Mr. Holden: That is true.

Mr. Teal: I would like to know if, in analyzing this report there would be any objection to using the reports of the Interstate Commerce Commission, from which this was taken, so, if it is desired to analyze it we can do so.

Mr. Holden: No objection, except insofar as it gets us into difficulty over the record, that is all—in determining what is in the record and what is not. That is the only point I have in mind.

Mr. Dillard: I would suggest that in analyzing it Mr. Teal can use those reports, and, if it is necessary to take a part of them out, they can be taken out.

Mr. Holden: I was going to suggest, if you desire to take any other figures out of the report, if you will prepare a typewritten statement and submit it to me, we will stipulate that it may go into evidence in that form, if we do no disagree on it. I presume we will not.

Mr. Holden: During the last hearings I offered, through Mr. Hogeland, the chief engineer of the Great Northern road, Exhibits 16, 18 and 19. Those three exhibits had to do, respectively, with the actual cost over a period of recent years of grading, ballasting, track-laying and surfacing. Since that hearing (which was had last May, I believe) there has been a more minute and careful detailed examination of those records made, and there are some slight changes found to be necessary in the exhibits, to make them as nearly accurate as we now think it is possible to make them. And I would like to recall Mr. Hogeland for a few moments, for the purpose of offering the corrected exhibits, in lieu of those which have been found to contain these minor errors. If you will take the stand, Mr. Hogeland.

ALBERT H. HOGELAND, recalled on behalf of complainants, testified as follows:

Examined by Mr. Holden.

Q. Mr. Hogeland, when you were on the stand before, you offered in evidence an exhibit marked "16," relating to the cost of grading on the Great Northern lines, from the year 1898 to 1907. In order that the matter may be fresh in the master's mind, and in our own, I wish you would state in a brief way just what the purpose was of offering that exhibit, and what, from your point of view, it showed.

A. Exhibit 16 was prepared and offered, to show the actual cost of grading on the line specified in that exhibit, covering a period from 1898 to 1907; the exhibit showing the total yardage handled on the line specified, the prices paid for the different classes of material (earth, hardpan, loose rock and solid rock) and the average price paid contractors for all those materials; and, in addition to that, the total cost per yard of all material so handled. This would be the average cost as paid contractors, plus the charges for overhaul and transportation of outfits, men and materials, for the grading, and extra bills, as paid contractors, not covered by their price per yard.

Q. By their contract price?

A. By their contract price per yard. After making and presenting Exhibit 16, a very much more careful and detailed examination has been made of the vouchers from which the charges were entered in the construction books; and this has resulted in a number of changes being made necessary in this exhibit.

Q. That detailed examination was made when, and under what circumstances?

A. It was made during the months of May, June, July and August, and was made by the accountants of the Interstate Commerce Commission, working in conjunction with our own employes; going through the vouchers from which the charges had been entered in the construction books. In going through these vouchers in that detailed way, a number of charges were found which did not apply to the contract grading; so in that way such charges should not have been set against the contract yardage. So in preparing a new exhibit to take the place of Exhibit 16, all such charges have been cut out. Further than this, on some of the lines it was found necessary to

change and correct the yardage as moved by contractors. This was also discovered in going carefully through the vouchers.

Q. Explain that a little more fully, will you? You have used the expression "yardage moved by contractors," apparently, as distinguished from yardage moved in some other way. That was the point I had in mind in asking the question. Will you make that clear to us?

A. If we take a concrete example, item No. 4, on Exhibit 16, the line from Jennings to Boundary, the original yardage—

Mr. Holden: If you are going to use that, perhaps we had better tender these exhibits now.

The Witness: I can state it generally.

Q. Before dealing with a concrete case, perhaps you can state generally what you had in mind in answer to my question?

A. There were some instances where an additional piece of work was discovered, where either the yardage had been omitted in Exhibit 16 and the charges included, or vice versa; so for that reason, for six of the lines as shown in Exhibit 16, it was necessary to correct the yardage. On one or two of the lines it was also found that certain material had been moved during the period of ballasting, which was charged to grading, and the yardage not included by us in our Exhibit 16. Correction has been made for a feature of that kind.

Q. Have you had a new exhibit prepared, covering the same lines and work as shown in Exhibit 16?

A. Yes, sir.

Mr. Holden: I would like to have this marked "Exhibit 16 Corrected." I am going to ask leave to withdraw original Exhibit 16 and substitute this in its place. I presume there will be no objection to that.

Mr. Walter: If the master please, I think the proper method would be to allow original Exhibit 16 to remain, and Exhiibt 16 Corrected to follow; because we are not able at this time to consent to the withdrawal of original Exhibit 16. It having been made part of the record, it seems to me it might properly remain so.

Mr. Holden: I have no objection, except on the ground of making the record voluminous. Perhaps after ascertaining the extent or the lack of extent, and the difference between the two, we may be able to come to an understanding on that subject.

Mr. Walter: Yes. But at present we object. Later we may be able to agree.

CONTRACT GRADING QUANTITIES AND PRICES.

Built	Line	Mileage	Earth		Hard Pan		Loose Rock		Solid Rock		Total Yardage	Av. Cont. Price	Total Charges	Av. Cost per Yd.
			Cu. Yds.	Price	Cu. Yds.	Price	Cu. Yds.	Price	Cu. Yds.	Price				
1898	Cloquet to Boyleston	126.12	3,842,846	19.4	66,201	40.0	35,700	45.0	52,423	$1.00	3,997,170	22.5	$1,145,564.23	28.7
	Deer River to Fosston													
1899	Hibbing to Virginia	18.78	437,632	22.8	25,903	37.9	18,617	42.9	8,318	.999	490,470	25.7	180,409.56	36.8
1901	Brookston to Ellis	46.49	991,524	20.2	44,952	38.8	24,400	44.1	8,948	1.115	1,069,824	22.4	297,623.09	27.8
1902	Jennings to Boundary Line	50.98	633,155	18.8	485,808	28.0	111,167	38.2	126,824	.95	1,356,954	30.8	798,001.41	58.8
	Marcus to Republic	69.38	1,056,929	19.3	664,605	34.8	135,726	40.0	535,524	.943	2,392,784	41.6	1,221,445.58	51.0
	Kelly Lake to Nashwauk	10.64	146,397	30.9	35,746	38.0	9,135	43.0	4,456	1.15	195,734	34.7	83,121.68	42.5
	Boundary to Swinton	43.38	552,712	20.5	1,160,457	32.5	302,027	40.0	304,413	.938	2,319,609	38.6	1,106,996.68	47.7
	Laurier to Danville	16.50	327,911	21.1	189,416	35.0	53,790	40.0	75,607	1.00	646,724	36.0	259,024.96	40.1
1903	Souris to Westhope	16.41	237,086	14.1	3,657	35.0					240,743	14.5	71,119.14	29.5
	Granville to Mohall	46.97	694,357	13.3			260	35.0	125	.85	694,742	13.4	143,874.00	20.7
1904	Columbia Falls to Rexford	69.18	1,125,967	20.4	2,572,471	35.0	484,755	40.0	1,170,155	.893	5,353,348	44.3	3,352,853.58	62.6
	Thief River Falls to Greenbush	41.09	468,598	16.4							468,598	16.4	100,570.70	21.5
	Mohall to Sherwood	14.85	164,057	13.1							164,057	13.1	42,361.29	25.8
	Edmore to Munich	24.87	348,851	16.9	19,936	41.5	69	39.3			368,856	18.2	120,047.17	32.6
	Swinton to Fernie	9.82	91,969	20.8	139,567	47.7	8,147	40.0	38,780	.95	278,463	45.2	159,343.74	57.2
	Grand Forks to Phoenix	24.63	42,893	19.6	253,173	35.0	86,359	40.0	621,524	.95	1,003,951	71.9	810,533.27	80.7
1905	Granby Smelter Line	4.74	91,907	20.6	69,128	35.0	8,941	40.0	11,427	.95	181,403	31.7	69,474.19	38.3
	Towner Line	46.13	485,193	13.6							485,193	13.6	98,769.36	20.4
	York Line to Thorne	34.68	454,797	13.7							454,797	13.7	95,216.87	20.9
	Westhope Extension	12.76	115,059	14.3							115,059	14.3	28,448.86	24.7
	Forbes Extension	13.36	168,240	14.4			192	37.8			168,432	14.5	42,876.20	25.4
	Munich Extension	20.53	234,480	15.0					100	.90	234,580	15.1	55,982.00	23.9
	Curlew to Midway	14.52	182,133	18.0	87,207	35.0	15,619	40.0	43,279	.90	328,238	33.0	172,167.06	52.5
1906	Greenbush to Warroad	44.00	372,440	18.1							372,440	18.1	81,159.91	21.8
	Midway to Molson	28.89	242,552	20.7	453,184	35.0	280,679	40.0	947,714	.925	1,924,129	62.3	1,394,803.46	72.5
	Boundary to Keremeos	18.20	201,502	21.1	139,111	35.0	68,491	40.0	56,947	.925	466,051	36.8	203,487.27	43.7
	Thorne to Dunseith	7.61	122,432	15.7							122,432	15.7	23,314.81	19.0
	Molson to Oroville	27.82	244,095	20.1	661,308	35.0	139,492	40.0	274,726	.90	1,319,621	44.2	713,693.05	54.7
	Sioux City to Ashland	103.15	2,821,252	17.6	134,903	35.0	720	40.0	2	.80	2,956,877	18.4	711,819.33	24.1
1907	Kelly Lake to Fermoy	23.40	656,642	36.0	62,083	42.0	11,277	47.0	2,653	1.15	732,655	36.7	397,222.23	54.2
	Aneta to Devils Lake	57.72	1,364,434	16.3	1,464	35.0	12,002	40.0	9	.90	1,377,909	16.6	302,290.51	21.9
	Oroville to Boundary	20.64	202,787	18.8	279,498	35.0	111,601	40.0	316,765	.941	910,651	52.5	557,028.76	61.2
	Crosby Line	89.16	1,238,996	17.1	15,006	30.6	130	35.0	827	.80	1,254,959	17.4	340,628.70	27.1
	Billings & Northern	194.16	5,756,915	20.5	1,682,424	35.3	1,053,799	41.5	1,602,305	.818	10,095,443	34.9	4,850,178.11	48.0
	Portage la Prairie Line	77.01	823,525	15.4	400	35.0					823,925	15.4	211,074.17	25.6
	Brandon Line	69.45	1,549,848	20.3	12,548	30.0	141,998	44.8	5,498	.826	1,709,892	22.6	552,615.27	32.3
	Morden Line	15.25	201,408	15.0							201,408	15.0	37,340.23	18.5
	Totals	1,553.20	28,693,523	19.3	9,260,156	34.7	3,115,093	40.7	6,209,349	.947	47,278,121	33.6	20,832,480.43	44.1

TOTAL CONTRACT QUANTITIES ON ALL ABOVE LINES:

	Cu. Yds.	Cost	Average Per Yard.
Earth	28,693,523	$ 5,545,074.31	19.3
Hard Pan	9,260,156	3,211,293.53	34.7
Loose Rock	3,115,093	1,270,666.25	40.7
Solid Rock	6,209,349	5,876,720.69	94.7
Total	47,278,121	$15,903,754.78	33.6

Chief Engineer's Office.

Q. Mr. Hogeland, I wish you would now take up Exhibit 16 Corrected, and indicate the essential points of difference between it and Exhibit 16, taking your own way and time. Make it clear to the master in what the difference consists and what the difference is in the final result?

A. The first change is found in the cubic yards of earth in item 4, being the line from Jennings to the Boundary Line. In former Exhibit 16 this was shown as 608,850 cubic yards; in the corrected exhibit it is shown as 633,155. This correction was due to a change of line at Rexford, where the charges appeared, but the yardage did not appear in the former Exhibit 16. The next change is in the line from Columbia Falls to Rexford.

Q. Wait just a minute. I do not know as it will be necessary to go through all these totals in detail; but I want to go far enough to make it clear. You say the yardage did not appear in item 4 on the former exhibit. Do you mean that in taking off from the construction books the yardage which went into this figure in the former exhibit, certain yardage was omitted, or just what do you mean by that?

A. Yes, certain yardage was omitted.

Q. Was not drawn off the construction books and put into the total shown on the first exhibit?

A. Yes, sir; not drawn off the construction books or from our estimate sheets.

Q. Now, let's follow out that item clear across the sheet, as perhaps it may, in a large way, illustrate the differences. That increased the number of yards in that piece of work, as I understand you, from 608,850 to 633,155?

A. It increased the yards of earth to that amount. The yards of hardpan were increased from 466,599 to 485,808. The yards of loose rock were increased from 110,921 to 111,167. The yards of solid rock were increased from 126,578 to 126,824. And the total yards were increased from 1,312,908 to 1,356,954.

Q. And that produced a change in the average contract price, did it not?

A. Yes, sir; produced a change in the average contract price.

Q. Of how much?

A. Making it 30.8 cents per yard instead of 31 cents.

Q. Now, will you follow up that case clear to the end of your exhibit, and show the total change in result?

A. The total charges, as shown on original Exhibit 16, for that line, were $644,694. The charges shown on Corrected

Exhibit 16 are $798,001.41. Dividing the total charges by the total yardage produces an average cost per yard of 58.8 cents instead of 49.1 cents. In addition to the increase in yardage, there has been a considerable increase in the total charges, due to the omission of a portion of the charges of that line from the construction book. That was also discovered in going through the vouchers for that line. The endeavor, in making the correction in this exhibit, has been to correctly show the total charges to grading, corresponding to the total yardage handled by the contractors; and all of the corrections that have been made have been to do that.

Q. What was the purpose of preparing this kind of a computation, and this exhibit?

A. The purpose was to show, from our experience, what the increased cost per yard had been, for grading, over and above what was paid contractors. It has been admitted by all of the engineers, in these cases, that there is a certain amount that should be added to contract prices, to cover the full cost of the work.

Q. You say "the full cost of the work." By that do you mean all of the work, or the work done by the contractor, or the yardage handled by the contractor?

A. I mean the yardage handled by the contractor.

Q. You mean, then, that there is some additional cost involved, in every experience, over and above the average price paid the contractor for his work by the yard? There is an additional expense that attaches to that work which is embraced in the contract?

A. Yes, sir.

Q. While you may have stated it before, will you state now in what that additional expense consists? Give the master some idea of what the items are, ordinarily?

A. When a contract for grading is let, it is provided that the railway company will furnish free transportation for the contractor's outfits, men and materials, used in the grading; will pay for over haul over and above a certain fixed distance; will also pay extra bills covering grading work, which cannot be measured, at the contract grading prices. So the increased cost per yard of the grading work, over and above what is paid the contractor according to his fixed prices in the contract, is produced by the things which the railway company furnishes in that way, or pays for in that way.

Q. Now, I do not believe it is going to be necessary to go through all the items, unless the other side desires to question you about certain of them. After your further examina-

tion of your books in relation to this fourth item, Jennings to the Boundary Line, the result in that case was to show a considerable wider spread between the average contract price and the average price per yard for all expenses incident to that work.

A. Yes, sir. And that is pretty largely due to the large item of charges which did not appear or was not taken from the construction book, but was found in going through the vouchers. I think probably an explanation of the Columbia Falls to Rexford line would make the whole statement a little clearer.

Q. I think perhaps you are right. Take that up—the item opposite the figures "1904."

A. In original Exhibit 16 we showed for earth 1,010,675 cubic yards; in Corrected Exhibit 16 we show 1,125,967. Under "hardpan," Exhibit 16 showed 2,591,720; Corrected Exhibit 16, 2,572,471. Under "loose rock," Exhibit 16 showed 485,001 yards; Corrected Exhibit 16 shows 484,755 cubic yards. Under "solid rock," Exhibit 16 showed 1,170,401; Corrected Exhibit 16 shows 1,170,155 cubic yards. Under "total yards," original Exhibit 16 showed 5,257,797; Corrected Exhibit 16, 5,353-348 cubic yards. These changes in the yardage were brought about partly by the sag raising which was done during the ballasting, the charges for which appeared under total charges to grading, but the grading was not shown in the contract yardage; also by some changes in classification which the final voucher showed had been made in making settlement with contractors, but was not shown in the construction books from which these items were drawn. The net result is to show on Corrected Exhibit 16 the average contract price of 44.3 as against 44.7 cents on original Exhibit 16, and to show an average cost per yard, after dividing total charges by total yardage, of 62.6 per yard instead of 63.6 cents per yard. The corrections as made in the Columbia Falls to Rexford line illustrate the reason for the various corrections that have been made.

Q. So in this case the average cost per yard has been reduced one cent from the average cost shown in orignal Exhibit 16?

A. Yes, sir.

Q. And what you have said about these two items, generally speaking, explains the changes that have been made in such other items wherein you have found reasons to make change found in error of amount in your former figures?

A. Yes, sir. That covers the changes so far as the yardage

is concerned. In regard to the total charges, it should be said that we found, in going back to the original vouchers, that there were a great many charges to grading made on account of work done by the railway company outside of the work done by the contractor. So, in order to have the total charges show correctly for the contract yardage, it was necessary to cut out charges of that kind.

Q. You found charges for work done by the railroad company's force, but which was not for work done by the contractor or under the contractor, and therefore it would be improper, in the endeavor to show only the charges that related to the contractor's work, to include those charges for work done by the railroad company's force?

A. Yes, sir, that is true. In order to have the charges in the column of "Total Charges" show only the charges to grading as done in moving the yardage by the contractor, it was necessary to cut out many charges made for any other work; for instance, yardage moved by the railway company in grading additional sidetracks, or for a stretch of double track, those charges being proper enough as against grading, but not right to show them in this statement as being done by the contractor and applying to the contract yardage.

Q. If I understand you, the column as it now stands, headed "Total Charges" is, after the revision you have spoken of, solely applicable to yardage under the column "Total Yardage," which is the yardage handled by the contractor?

A. Yes, sir; that is what it now shows.

Q. Since you put in Exhibit 16, do I understand that all of the items shown on the exhibit have been re-examined? I mean, that all of the different pieces of work have been re-examined?

A. Yes, sir. Each piece of work has been examined, the original vouchers gotten out and checked in the way that I have indicated, so as to have the total charges represent accurately the charges to the grading as shown under "Total Yardage."

Q. I find that there are thirty-seven different pieces of work on the exhibit. How many different pieces did you find it necessary to change in the item of cubic yards of earth?

A. We changed six.

Q. And under the column entitled "Hard pan," how many changes were made?

A. Three.

Q. "Loose rock?"

A. Three.

Q. "Solid rock?"
A. Three.
Q. And under the column "Total Yardage?"
A. Six.
Q. Under the head "Average Contract Price," there were how many changes in price?
A. Five.
Q. Now, that must mean that where there were changes in six of the cases under the head "Total Yardage," at least once the change was so slight as not to show itself in the total average contract price, was it not?
A. Yes, sir.
Q. It was only in five of these cases that the change was of sufficient importance in the division to make it apparent, in carrying the figures out to one decimal that it would change the first decimal. Now, directing your attention to the fourth line from the bottom—the Billings and Northern; that line seems to have changes all the way through. What was the condition of that line when you made up Exhibit 16 and gave your testimony about six months ago?
A. The charges had not all been entered in the construction book at that time.
Q. That was a new line, running from where to where?
A. Running from Billings to Armington, near Great Falls, Montana.
Q. Practically the connection from Billings; the junction of the Northern Pacific and the Burlington with the Great Northern line at Great Falls?
A. Yes.
Q. At the time you made up your former exhibit, the charges had not all come in and been spread upon the books; is that the reason why the changes were made necessary in Exhibit 16 corrected?
A. Yes, sir, that was the principal reason for the changes in Exhibit 16 corrected.
Q. At the foot of this exhibit you have a table entitled "Total Contract Quantities" on all above lines?
A. I think it would be well to show what the net result of Exhibit 16 corrected is as compared with Exhibit 16.
Q. Yes. I overlooked that. I will withdraw my question. I wish you would take up the totals of Exhibit 16 corrected and show the net changes.
A. The total yards of earth, in Exhibt 16, were 28,675,436; Exhibit 16 corrected, 28,693,523. Hardpan, Exhibit 16, 9,087,-261; Exhibit 16 corrected, 9,260,156. Loose rock, Exhibit 16,

3,129,458; Exhibit 16 corrected, 3,115,093. Solid rock, Exhibit 16, 6,011,326; Exhibit 16 corrected, 6,209,349. Total yards, Exhibit 16, 46,903,481; Exhibit 16 corrected, 37,278,121. The average contract price in Exhibit 16 33.4 cents; in Exhibit 16 corrected, 33.6 cents.

Q. An increase of .2 cents as the result of these corrections?

A. Yes, sir. Total charges, Exhibit 16, $20,973,408; Exhibit 16 corrected, $20,832,480.43. The average cost per yard Exhibit 16, 44.7 cents; Exhibit 16 corrected, 44.1 cents.

Q. A reduction of .6 cents?

A. A reduction of .6 cent per yard. This shows that the difference between the average contract price and the average cost per yard was, on original Exhibit 16, 11.3 cents per yard, and, on Corrected Exhibit 16, 10.5 cents per cubic yard.

Q. A reduction of .8 cent?

A. A reduction of .8 cent per yard?

Q. Now, will you analyze the table at the bottom of this exhibit?

A. The table at the bottom of the exhibit shows the total contract quantities on all above lines.

Q. Of course the changes which you have already referred to, as shown in the totals of the table in detail above this table at the foot, are correspondingly shown in the table at the foot?

A. Yes; it is simply placed there to bring together the total contract quantities on all of the above lines and the average price per yard, all of which I have just read off.

Q. The 37 pieces of work shown in the exhibit run from 1898 to 1907, both inclusive, as I observed?

A. Yes, sir.

Q. I think at this time it would be important for you to analyze or explain your process of reasoning in claiming, as you do, that this exhibit justifies the prices which you have shown in your Exhibit 15 in this case, which is the condensed exhibit of the cost of reproduction of the system. To illustrate, you show in the total at the foot of Exhibit 16 corrected that the average contract price per yard for earth work of these 37 different pieces of work, done during the ten years in question, was 19.3 cents per yard; similar figures for hard pan, loose rock and solid rock. Now I wish you would explain the process you have gone through in arriving at your statement that the experience shown on this exhibit justifies you in the prices you have stated to be your opinion as to what it would cost in reproducing these lines.

A. At the foot of Corrected Exhibit 16 we find the average price paid to contractors per yard is, for earth 19.3 cents; for hard pan 34.7 cents; for loose rock 4.7 cents; for solid rock 94.7 cents. As before stated, we find from this Exhibit 16 corrected the difference between the average contract price and the average cost per yard is 10.5 cents. Adding this to the average per yard paid contractors produces, for earth 29.8 cents; for hard pan 45.2 cents; for loose rock 51.2 cents; for solid rock 105.2 cents. The prices which I have used in Exhibit 15, under the item of grading ore, for earth 31 cents, for hard pan 45 cents, for loose rock 55 cents, and for solid rock $1.10. So that the prices as obtained by applying the 10.5 cents increase over average contract prices on Exhibit 16 corrected does not quite produce the price per yard which I have used in Exhibit 15, except in the item of hard pan. But I think that small difference is fully accounted for by the fact that in Exhibit 16 corrected a considerable portion of the grading goes back to a period when the contract prices were much lower than they are at the present time; for instance, all of the construction from 1898 to 1903 and 1904 the contract prices were much lower than they are at the present time. So that in a reproduction estimate I think we are justified in using somewhat higher prices than would be shown from the average obtained from Exhibit 16 corrected.

Q. You also offered in evidence, Mr. Hogeland, Exhibit 18, entitled, "Actual cost of ballasting." I will ask you if since that time you have made another Exhibit 18, and, if so, why and what the changes are? Before stating what the changes are I would like to have you give me the exhibit.

The witness produced a paper which was marked Hogeland Exhibit 18 corrected.

COMPLAINANT'S EXHIBIT 18 (HOGELAND) CORRECTED.

GREAT NORTHERN RAILWAY COMPANY.

ACTUAL COST OF BALLASTING LINES CONSTRUCTED 1901-1908, AS SHOWN BY CONSTRUCTION BOOKS.

Date.	Line.	Mileage.	Cu. Yds. Ballast.	Train Service.		Labor, Tools and Supplies.		Repairs of Equipment		Pit Tracks		Stripping Pits		Transportation		Total	
				Charges	Per Yd.	Charges.	Per Yd.	Charges	Per Yd.	Charges	Per Yd.	Charges	Per Yd.	Charges	Per Yd.	Charges	Per Yd.
1901	Brookston to Ellis, Minn	46.49	262,407	$30,314.53	11.5	$83,143.87	31.7	$ 5,181.00	2.0					829.62	0.4	$ 119,469.02	45.6
1902	Jennings to Rexford, Mont	42.26	126,780	24,165.85	19.1	57,838.96	45.6	4,987.13	3.9					11,378.34	9.2	98,370.28	77.8
	Marcus to Republic, Wash	69.38	118,404	22,929.10	19.4	38,906.84	32.8	6,163.49	5.2					8,334.33	7.1	76,333.76	64.5
	Kelly Lake to Nashwauk, Minn	10.64	21,280	3,415.72	16.0	7,178.25	33.7	483.70	2.3							11,077.67	52.0
	Boundary to Swinton, B. C	43.38	86,760	22,377.29	25.8	34,161.47	39.3	691.15	0.8					4,773.79	5.5	62,003.70	71.4
	Laurier to Danville, B. C	16.50	32,000	6,788.45	21.2	10,253.24	32.0	2,000.14	6.3					218.07	0.7	19,259.90	60.2
1904	Columbia Falls to Rexford, Montana	69.18	213,931	31,082.15	14.5	58,222.69	27.2	1,895.54	0.9	2,003.59	1.0			32,097.82	15.0	125,301.79	58.6
	Swinton to Fernie, B. C	9.82	33,050	5,852.54	18.0	9,990.86	30.1	1,230.29	3.6	154.82	0.4			469.54	1.4	17,699.05	53.5
1905	Curlew to Midway, Wash	14.52	42,600	5,729.50	13.4	10,302.39	24.2	1,751.44	4.1	74.96	0.2			1,909.77	4.4	19,768.06	46.3
1906	Molson to Orville, Wash	27.82	78,610	10,183.12	13.0	33,166.42	42.2	746.42	0.9					5,250.17	6.7	49,346.13	62.8
	Midway to Molson, B. C	28.89	87,279	9,786.99	11.2	32,923.54	37.7	2,034.68	2.4	252.88	0.3			7,532.81	8.6	52,530.90	60.2
	Sioux City to Ashland, Neb	103.15	231,353	29,659.12	12.8	77,499.78	33.5	10,652.47	4.6	10,670.47	4.6	2,994.64	1.3	6,716.96	2.9	138,193.44	59.7
1907	Aneta to Devils Lake, N. D	57.72	185,699	27,259.34	14.7	78,980.68	42.5	1,090.60	0.6	1,714.63	0.9	2,888.80	1.5	2,110.54	1.1	114,044.59	61.3
1908	Armington to Laurel, Mont	194.53	543,018	108,957.25	20.1	261,672.52	48.2	5,594.22	1.0	14,664.83	2.7	37,303.24	6.8	43,642.17	8.0	471,834.23	86.8
		734.28	2,063,171	$338,500.95	16.4	$794,241.51	38.5	$44,503.27	2.2	$29,536.18	1.4	$43,186.68	2.1	$125,263.93	6.1	$1,375,232.52	66.7

In this statement the Charges for "Rental of Equpiment" as shown in the Construction Books have been cut out. Instead thereof, it would be proper to add an item for "Depreciation of Equipment."

Under "Train Service" is included all train service for loading, hauling, unloading Ballast.

Under "Labor, Tools and Supplies" is included all labor loading, unloading, placing ballast under ties, tamping, dressing and lining track, also steam shovel supplies and track tools.

Under "Pit Tracks" and "Stripping Pits" are included such charges as appear in the Construction Books so designated: on many lines the cost of putting in pit tracks and stripping has been charged directly to labor and cannot be separated.

Office of Chief Engineer,
St. Paul, November 22, 1909.

A. The same analysis and examination of the vouchers which were made for grading was also made for ballasting, and the corrections have been made for the same reason, so as to have the charges correctly represent the yardage handled.

Q. I notice the first item, Brookston to Ellis, where there is a considerable change. Perhaps that would bear some explanation?

A. The line from Brookston to Ellis in Exhibit 18 showed 143,100 cubic yards of ballast; in Exhibit 18 corrected we show 262,407. This is because in original Exhibit 18 we use the yardage of ballast that is now in the line; but it appears from an examination of the vouchers and of all of the records bearing on the ballasting done on that line that there were moved at that time 262,407 cubic yards for which the charges in the construction books appear as charged to ballasting. A portion of that yardage was used in taking out sag and is not properly ballasted, but in order to have the charges and the cubic yards agree we have taken the yardage moved at that time and as shown by the charges. There are two other corrections in the cubic yards. The line Midway to Molson, Exhibit 18, showed 87,079 cubic yards; Exhibit 18 corrected shows 87,279, which I believe was a clerical error. The line from Armington to Laurel, on Exhibit 18 showed 559,419 cubic yards; Exhibit 18 corrected shows 543,018 cubic yards, being a reduction.

Q. Is that part of the Billings and Northern Line you spoke of a while ago?

A. Yes, sir; and the difference in the yardage is brought about by cross-sectioning of the ballast pits, which has been done since the line was completed, which is quite recent, the quantities used in original Exhibit 18 being partly estimated from carloads.

Q. When you say "cross-sectioning of the ballast pits," explain what you mean?

A. I mean an accurate measurement of the ballast pits from which the material was taken.

Q. You have got as nearly as may be the actual number of cubic yards taken out?

A. Yes, sir. I desire to explain that by saying that as ballast work progresses it is usually the practice to estimate the ballast by car measurement, but after the work is completed the ballast pits are carefully measured, from which a correct amount of material handled is obtained.

Q. At the time you made up your original Exhibit 16 that measurement had not been made?

A. No, sir. The line had only recently been put in operation.

Q. Now going back to the Brookston to Ellis line, the net result there was to make a considerable reduction from the total price per cubic yard shown in original Exhibit 16, which was then 78 cents; now it is 45.6 cents?

A. Yes, sir.

Q. Corresponding changes, some slight additions and some slight reductions, exist in five other items, I believe, on this exhibit. Will you now state the total results in Exhibit 18 corrected and indicate the amount of the total change in the total price per yard?

A. Exhibit 18 showed total cubic yards of ballast 1,960,065; Exhibit 18 corrected shows 2,063,171. The total charges to ballasting in Exhibit 18 were $1,300,057; in Exhibit 18 corrected it is $1,375,232.52. Dividing the total charges by the total cubic yards of ballast, produced on Exhibit 18, 66.3 cents per cubic yard, and on Exhibit 18 corrected 66.7 cents.

Q. That is an advance of four-tenths of a cent in the total cost per yard?

A. Yes, sir.

Q. Have you also revised your Exhibit 19, which is entitled "Actual cost of track laying and surfacing," and have you another exhibit on that subject?

A. We have.

Mr. Holden: We offer in evidence Exhibit 19 corrected, entitled "Actual cost of track laying and surfacing."

ACTUAL COST OF TRACKLAYING AND SURFACING

Built	LINE	Miles Laid	Train Service		Labor, Handling Material and Laying Track		Surfacing Track		Repairs of Equipment		Transportation		Total Charges	Per Mile
			Charges	Per Mile	Charges	Per Mile	Charges	Per Mile	Charges	Per Mile	Charges	Per Mile		
1898	Cloquet to Boyleston Deer River to Fosston	159.06	$ 18,153.89	$ 114	$ 57,081.55	$359	$ 22,551.66	$142	$ 2,252.44	$14	$ 1,154.58	$ 7	$ 101,194.12	$636
1899	Hibbing to Virginia	22.76	1,895.17	83	12,946.29	569	.....	.....	.....	.....	241.20	10	15,082.66	662
1901	Brookston to Ellis	54.64	6,416.54	118	20,788.29	380	.....	.....	286.00	5	165.92	3	27,656.75	506
1902	Jennings to Rexford	47.26	7,583.57	160	23,808.86	505	.....	.....	.....	.....	2,256.51	48	33,648.94	713
	Marcus to Republic	75.74	20,264.34	268	40,073.10	529	.....	.....	2,453.14	32	1,666.87	22	64,457.45	851
	Kelly Lake to Nashwauk	11.29	1,387.13	123	3,280.98	291	2,937.81	260	.....	.....	.....	.....	7,605.92	674
	Boundary to Swinton	49.66	11,019.17	222	23,549.13	474	.....	.....	463.16	9	933.62	18	35,965.08	723
	Laurier to Danville	19.50	2,734.78	140	9,443.06	484	2,711.37	139	221.95	11	43.61	2	15,154.77	776
1903	Souris to Westhope	17.74	1,026.04	58	10,021.85	565	7,200.08	406	139.88	8	212.96	12	18,600.81	1049
	Granville to Mohall	49.96	9,149.40	183	15,600.14	313	11,064.14	221	1,181.04	23	333.65	7	37,328.37	747
1904	Columbia Falls to Rexford	84.96	21,330.28	251	50,207.32	591	.....	.....	36.50	.....	5,532.45	55	77,106.55	897
	Thief River Falls to Greenbush	43.70	9,083.05	207	12,930.16	296	12,203.62	280	11.88	.....	201.17	5	34,429.88	788
	Mohall to Sherwood	16.83	3,010.81	179	6,661.50	396	5,287.10	315	387.04	23	194.41	11	15,540.86	924
	Edmore to Munich	26.83	4,587.48	171	9,443.54	352	10,912.88	407	582.16	22	289.07	11	25,815.13	963
	Swinton to Fernie	11.30	1,941.98	171	7,959.60	705	.....	.....	.....	.....	93.91	9	9,995.49	885
1905	Towner Line	49.71	6,083.28	122	12,890.88	260	10,988.91	221	679.68	14	250.08	5	30,892.83	622
	York Line	37.12	4,968.84	134	10,179.93	274	9,673.52	261	522.64	14	238.51	6	25,583.44	689
	Westhope Extension	14.16	1,420.53	100	4,282.78	302	4,070.73	288	182.88	13	109.09	8	10,066.01	711
	Forbes Extension	14.92	1,442.85	97	6,260.71	419	5,952.37	399	.....	.....	106.66	7	13,762.59	922
	Munich Extension	23.15	3,650.21	157	8,961.76	387	7,119.11	308	465.09	20	171.27	7	20,367.44	879
	Curlew to Midway	16.01	3,906.05	243	8,903.03	557	.....	.....	74.30	5	371.87	24	13,255.25	830
1906	Midway to Molson	33.35	10,573.86	317	22,072.48	662	98.86	3	784.44	23	1,506.56	46	35,038.20	1051
	Sioux City to Ashland	121.23	16,081.64	133	58,104.41	479	2,607.92	22	293.79	2	3,207.17	26	80,294.93	662
1907	Kelly Lake to Fermoy	26.38	5,907.74	224	14,093.18	533	8,058.43	305	225.16	9	309.43	12	28,593.94	1083
	Aneta to Devils Lake	66.90	18,075.52	270	39,573.33	593	.....	.....	157.33	2	375.05	5	58,181.23	870
	Berthold to Crosby	95.67	25,160.45	263	42,549.37	445	28,108.52	293	184.99	2	936.57	10	96,939.90	1013
	Portage la Prairie	83.58	20,827.61	250	36,265.24	433	51,752.51	619	270.73	3	302.05	4	109,418.14	1309
	Brandon Line	76.67	14,241.37	184	29,511.23	389	49,483.53	643	716.82	9	644.10	8	94,597.05	1233
	Morden Line	17.58	4,766.49	271	8,985.66	511	15,143.64	861	.....	.....	24.24	1	28,920.03	1644
1908	Armington to Laurel	229.08	76,393.14	333	128,205.56	560	.....	.....	4,812.52	21	8,728.43	38	218,139.65	952
	Totals, 1898 to 1908	1596.74	333,085.21	209	734,634.92	460	267,926.71	167	17,385.56	11	30,601.01	19	1,383,633.41	866
							Less Estimated Cost of Laying 940 Switches at $25						23,500.00	15
													$1,360,133.41	$851
	Totals, 1904 to 1908	1089.13	253,455.18	233	518,041.67	475	221,461.65	203	10,387.95	10	23,592.09	22	1,026,938.54	943
							Less Estimated Cost of Laying 733 Switches at $25						18,325.00	17
													$1,008,613.54	$926

In this statement the Charges for "Rental of Equipment" as shown in the Construction Books have been cut out. Instead thereof, it would be proper to add an item for "Depreciation of Equipment."

Under "Train Service" is included all Train Service in Material Yard, hauling Track Materials to the front, handling tracklaying machine, and moving boarding outfits and men.

Under "Labor, Handling Material and Laying Track" is included all labor in Material Yard, handling material, curving rail, laying tracks, putting in switches, placing tie-plates, also Tracklaying Tools and Supplies.

Under "Surfacing Track" is included Labor and Tools surfacing Track, to put it in condition for passage of Construction Trains, and keep it in condition until ballasting is done.

Under "Repairs of Equipment" is shown charges to that item for Equipment actually in use tracklaying and surfacing.

Under "Transportation" is shown transportation charges for men engaged on the work tracklaying and surfacing.

Chief Engineer's Office,
November 22, 1909.

Q. Will you explain this exhibit?

A. The same detailed examination of the vouchers and the records from which the construction books were prepared, showing the cost of track laying and surfacing, has resulted in a corrected exhibit for this purpose. This is partly due to corrections in the miles of track laid and surfaced and partly due to corrections in the total charges for the work. In one instance in particular it was found that charges were made against surfacing of track which properly should have been a charge against ballasting.

Q. What instance was that?

A. That would be on the line from Brookston to Ellis, the third item, where a reduction was made in the total charges from $39,118.15 to $27,656.75.

Q. I notice in the first item Cloquet to Boyleston and also Deer River to Fosston, which seems to be a consolidated item, there is a considerable change in mileage.

A. Yes, sir. That was brought about by some side tracks and some double tracks having been laid during the construction period and the charges entered but was not taken into account in preparing the original Exhibit 19; so that in order to have the total charges correspond to the total miles for which the charges were made it was necessary to make a correction, and that principle has been followed through in preparing the new exhibit.

Q. The other changes of mileage are very inconsiderable, I note?

A. Well, there is one considerable change in the third item. Original Exhibit 19 showed 49.98 miles; corrected Exhibit 19 shows 54.64 miles. That was due to some side tracks having been omitted from the original Exhibit 19, the charges being shown. In other words the charges were in but not all of the mileage was in on which those charges were made.

Q. Unless there is some other detail of the table that you think it important to call attention to, you might speak now of the changes in the totals.

A. This corrected Exhibit 19 shows a total mileage of track laid and surfaced of 1,596.74 miles, as against 1,565.87 miles in original Exhibit 19. It shows total charges of $1,383,633.41 as against $1,439,164.93 in the original Exhibit 19. Dividing the total charges by the total mileage, produces $866 per mile on corrected Exhibit 19, as against $919 on original Exhibit 19. Deducting the estimated cost of laying 940 switches, amounting to $15 per mile, produces $851 per mile, according to Exhibit 19 corrected, and $904 per mile on original Exhibit

19. This statement of track laying and surfacing, like the statement of grading, covers a period of much lower prices than prevail today. For that reason I have made a second summary, on corrected Exhibit 19, being the totals from 1904 to 1908. This covers a mileage of 1,089.13 miles. The total charges for track laying and surfacing amounted to $1,026,-938.54, or an average cost per mile of $943. Deducting for laying 733 switches an average of $17 per mile produces $926 as the net cost per mile for track laying and surfacing as shown by this statement for the period of 1904 to 1908.

Cross-Examination by Mr. Teal.

Q. Taking up your corrected Exhibit 16, I would like to see if I understand the purpose of that exhibit. It covers a period of contract grading, with quantities and prices, from 1898 to 1907, showing the average contract price and then the average cost per yard. I take it that that exhibit is intended to show what it cost the Great Northern Railway Company to do the work set out therein during that period. Is that correct?

A. Yes, sir.

Q. Now, when you say that that is what it cost the Great Northern Railway Company, is there in these total charges that are added the transportation charges which you have referred to at different times on the work?

A. Yes, sir, the transportation charges for contractors' outfits, contractors' men, powder and supplies used in the grading.

Q. Is that at prices which the contractors actually paid to have their man hauled, their outfits hauled, so that those prices appear as part of the income of the Great Northern Railway during that period?

A. No, sir, so far as transportation over the Great Northern lines is concerned, the contractors did not pay it, but it is a charge which the company has made for transporting such outfits, men and supplies.

Q. In other words, the transportation charge is made as a charge which appears against the cost of the road. That is correct, isn't it?

A. Yes, sir.

Q. But there is no credit given to the income side of the road for transportation received for hauling that, is there?

A. I don't remember—

Q. In other words that will not appear in the income account of the company, will it?

A. I can't tell you about that.

Q. Let me give you an illustration. When you were on the stand previously you spoke of some short piece of road in which, if I remember correctly, you said that there were some 12 or 15 thousand men hauled there within a limited time. Did you use that as an illustration?

A. I don't remember the number, but I think that referred to the Billings & Northern Railroad.

Q. There was a very large number, was there not?

A. Yes, sir.

Q. And you also testified that as part of the construction of that road, the transportation charges of those men were figured in at the regular rates of transportation. Isn't that correct?

A. Yes, sir.

Q. Now, I ask you if the transportation of those men which was figured in against the cost of this road appeared in the revenue side of the road so that the public would get the benefit in the revenue side amongst the earnings as well as be charged with the carriage as a part of the cost of the production of the road?

Mr. Holden: Mr. Hogeland is not the accounting officer.

Mr. Teal: If he says he does not know you will perhaps be very glad to furnish the information. If he does know, he can say so.

A. I can't tell you as to how it would appear for transportation furnished directly by the Great Northern Company, but for the line that you mentioned, the Billings & Northern, a considerable portion of the transportation was paid directly by the Great Northern Company to the other companies who hauled the men or the outfit.

Q. Of course, then, that would appear in the income?

A. Undoubtedly.

Q. But I was speaking of the Great Northern. To come back, then, this does represent when we get out here the average cost per yard, every element of cost that has entered into the moving of any of the material mentioned therein, as nearly as you can judge.

A. Yes, sir, as nearly as we can get it.

Q. In estimating the reproduction (as some call it; some call it reproductive value of this road) there is one question I would like to ask you. During all the time there is a constant charge, varying in amount, for maintenance of way and structures, that appears in the charges for operation? Of course you understand that to be the case?

A. Yes, sir.

Q. That varies, I suppose a thousand to fifteen hundred dollars per mile of road per year. Now, what sort of work would be done or be chargeable to that maintenance of way and structures account?

A. All of the work which the section forces are engaged upon in the up-keep of the track, carpenters in repairing bridges and buildings; that would be a portion of the charges.

Q. In the up-keep of the track and of the grades, these section men are constantly engaged more or less in ballasting, are they not, or keeping the track in order in that way?

A. They are engaged in repairing the ballast, but not in the ordinary ballasting work.

Q. Oh, I understand. For instance, through a cut or anything of that kind, if there is a small slide or the banks need sloping or the side of the grades need filling up, the section men do that, don't they?

A. They do to a limited extent.

Q. That is what I mean. Could you give any idea, running over a series of years, like you have taken the Great Northern here, to what extent the work that has been done by the section men through a series of ten years on the Great Northern and which has been charged to the operating expense account, would appear in this reproductive estimate?

A. I don't think that would appear at all.

Q. Then, if any cuts were widened or the slopes fixed up, or anything like that, there would be no allowance for that; that would not appear as—

A. Our statement of cost of reproduction is based on reproducing the system as nearly the way it exists now as practicable.

Q. That is what I understood.

A. Taking the cuts and the fills as near the way they exist now as we can.

Q. That is what I understood.

A. But necessarily, in figuring the cost of reproduction, you have to consider that as being done during that period. Therefore it appears in our reproduction statement as total yards to be handled.

Q. That is what I understood. Assuming any allowance would be made,—not by you, but any allowance be made by anyone analyzing these figures, there is no allowance made for section men during the course of the year, or anybody else, for the maintenance of this way and structure that enters into the operating account.

A. No, I have not taken it into consideration in that way.

Q. Now, in connection with this exhibit here, you stated that the average cost per yard was 10.7 cents over the average contract price?

A. 10.5.

Q. 10.5, was it?

A. Yes.

Q Now, if I understand that correctly, that average cost per yard was arrived at by adding up these columns and dividing it by the number of different items.

A. By the total yardage.

Q. I notice here, in 1907, a line from Kelly Lake to Fermoy, 23.40 miles, on which the contract price on earth was 36 cents which is very, very much higher than any other contract price for like material in the table at any place. That must have been up in northern Minnesota, wasn't it?

A. Yes, sir.

Q. Through wet land or some condition under which it was a hard piece of road to build; is that the idea?

A. Rather difficult, yes, sir.

Q. So that would account for that high price in there, would it not?

A. Partly so, yes, sir.

Q. Do you think that your method of arriving at the amount that should be charged to the contract price, resulting from the average advance as figured out by you, is fair as applied to earth?

A. That is, you mean is it fair to add this 10.5 cents to the different classes of material?

Q. No, the earth.

A. The same?

Q. Yes.

A. Apply it the same to all classes of material?

Q. Yes.

A. Yes, I think it is.

Q. Now, you take it on your own exhibit there, and I notice that there are eight different items where earth only was handled. On those eight different items where earth only was handled, the average cost per yard is very much less than the result you arrived at by taking 19.3 per cent. and adding the other amount to it. Now you are dealing with exact figures, and you say that this is, as nearly as you can arrive at it, what it actually cost. If that is true and you have earth, clear, separate and apart from the others, why wouldn't that average be the fair average rather than the average of it all?

A. It would depend on the location of the line and the different conditions to contend with, my claim being that this statement, extending over a period from 1898 to 1907, shows averages which are very close to correct results, but that you cannot pick out individual lines and make deductions from them. You are liable to be astray either one way or the other.

Mr. Holden: Are you correct, Mr. Teal, in your analysis of the items where there is only earth, that there is very much less? I find in some of them there is more.

Mr. Teal: I am quite willing to have that shown.

Q. Let me ask you this, Mr. Hogeland: If we would take a series of items there of the earth, and the average cost per yard showed less than this other average that you have selected, would that be a fair result to arrive at? Would that be fair?

A. I don't understand that question.

Mr. Donnelly: You mean, do you not, Mr. Teal, that if the excess of the average cost per yard over the amount actually paid for the earthwork itself were less than is shown, would it then be a fair average?

Mr. Teal: Well, I think you are right.

Q. I will ask you a concrete case. The Morden line there, the very last item that you have, shows earth at 15 cents a cubic yard, does it not—the very last item on Exhibit 16?

A. Yes, sir.

Q. The total average cost per yard of the earth there, only earth being used, was 18-1/2 cents per cubic yard, was it not?

A. Yes, sir.

Q. Then, that cost 3-1/2 cents more, according to these figures, than the average contract price?

A. That is true.

Q. Now, in your sheet here, in getting up your reproduction cost you figured that at 31 cents—that earth? I mean on this original.

A. Yes, all of the earth work was figured at 31 cents.

Q. Now, I will go right to the top here. There is Thief River Falls to Greenbush, 16.4. Only earth was moved. The average cost per yard was 21.5. That made five cents?

A. Yes, sir, 5.1 cents.

Q. The next one, Mohall to Sherwood, the contract price was 13.1 and the average cost was 25.8.

A. Showing a difference of 12.7 cents.

Q. Yes. Now take the Towner line, which was 13.6, and the total cost 20.4.

A. Yes, sir; being a difference of 6.8 cents.

Q. The next one was 13.7 and 20.9.

A. Being a difference of 7.2 cents.

Q. The next one was 14.3 and 24.7.

A. Yes, sir, showing a different of 10.4 cents.

Q. The next one was 18.1 and 21.8.

A. Yes, sir, showing a difference of 3.7 cents.

Q. The next one was 15.7 and 19 cents.

A. Yes, sir, showing a difference of 3.3 cents.

Q. Now, my figures may be wrong, but as I added them up it made a difference of 6.8. Of course the figures will show for themselves, but my figures show a difference of 6.8 cents—an average difference between the average cost of the yard and the average contract price of 6.8 cents on the earth. Now, if this 19.3 is right, the contract price, and your 31 cents is right, that makes a difference as you have made it of 11.7? That is correct, is it?

A. It would take 11.7 cents to produce the 31?

Q. Yes.

A. Yes, sir.

Q. You think, then, that where you get a series of items in that way, showing earth work unconfused with anything else, that that does not show a nearer average result than where it is confused with others?

A. The lines you have selected, being the lines that show simply earth work, do not represent an average of the earth work to be moved on the system. Other light, largely North Dakota lines put in with scrapers on the side, did not require the shipment or the employment of large outfits, and were in every way the most economical construction that exists in the system. But the whole statement is made to show the entire construction undertaking carried out during that period. So that it includes these light lines as well as the heavier lines, and in that way the average is much safer than picking out any particular items.

Q. I may be mistaken, but I understood you to say, and that is the reason I asked you, if this statement did not represent or was not intended to represent the average cost of this kind of work on the Great Northern system, and you said it did.

A. It does.

Q. If my addition is correct, taking the first eleven items on earth on that exhibit, the total average price paid from

1898 to 1904 was 20.08 cents per cubic yard, and taking the last eleven items indiscriminately, which include that 36 cent contract, the average is 19-1/2 cents per cubic yard of earth. Therefore it would indicate to my mind that earth is not only being moved cheaper the last few years on your system than it was the first, but also that those figures which you have put in here fairly represent the system—that is, the work of moving earth on your system?

A. I don't follow you in your deductions there, Mr. Teal.

Q. You stated a while ago that you had advanced the difference between the average cost per yard, as shown by this sheet here, and the amount that you used when you got up your tabulation because you thought of later years that this work was costing more; that therefore, it was fair to add some small amount, did you not?

A. I offered that as an explanation as to why the corrected Exhibit 16 did not quite justify the prices I had used in Exhibit 15, except for the item of hard pan; but you should remember that I have testified that in making up Exhibit 15 I was not guided by the figures in Exhibit 16, but I did make up Exhibit 16 to show what grading had cost us during that period of years and from that to justify the figures which I had used.

Q. And you still think that throwing earth, hard pan, loose rock, solid rock together as you have here, figuring the prices as you have here, arriving at an average return as you have here, and then applying that average difference is fair to earth and to rock and to everything indiscriminately?

A. I believe it is.

Q. In building railroads nowadays, as compared with ten or twelve years ago, are there any improved methods or improved tools or appliances that enable you to move earth, rock, or anything else quicker and more economically than you used to?

A. The employment of steam shovels has to a larger extent in recent years than formerly enabled work to be carried out more expeditiously.

Q. Does it save anything in cost?

A. It does at the present time, because of the great difficulty in getting labor; but as compared with the methods in vogue a number of years ago when labor was of a better class and of a lower price it affects very little saving in dollars and cents in the construction cost.

Q. But as of today it does affect a considerable saving both in time and cost, does it not?

A. Yes, sir.

Q. Is the use of the steam shovel the only advance that has been made in this handling of material and the building of railroads?

A. No, there are other machines, but I mentioned the steam shovel as being the principal one.

Q. There has been an advance in the construction, an advance in the handling of these materials, the same as there has been in everything else, has there not—advances in every other line of work?

A. Yes, sir.

Q. You still believe, do you, Mr. Hogeland, that the Great Northern road could be constructed on the plan that you have laid out, through the country that you have laid it in, and the cities as they exist, and in the locations it is, and not pay anything above operating expenses for eight years? I say do you still believe that?

A. I still believe that if you attempt to reproduce it in a period of eight years as it exists today, that any revenue from commercial business would not be more than sufficient to pay operating expenses.

Q. You still believe that?

A. I still believe that, yes, sir.

Q. In looking up these figures and the preparation of them, did you happen to run across what the actual cost of any considerable portion of the work has been of that 56 per cent., I think you said, that came from the books, in your former testimony?

A. You are speaking now of the grading alone?

Q. Yes, the building of the road.

A. You refer to the grade?

Q. Yes, to the grading and the other work too.

Mr. Holden: What was the 56 per cent.? I don't remember.

Mr. Teal: I think it was 56 to 54 per cent., or something of that kind, that came from the books.

A. Yes, sir, I said that of the grading quantities 56 per cent. came from quantities as actually paid contractors.

Q. And you also stated that you did not use the figures that the books showed were actually paid?

A. That is right.

Q. Could you tell us today what the actual cost of this particular work was as compared with the figures you have made up.

A. No, sir, I cannot.

Q. Your books show that, don't they?

A. Yes, sir, they show that.

Q. There is no particular reason for not showing that, is there, that you know of?

A. No, but I do not think it would be of any particular value in reproduction.

Q. Is it more or less than your figures?

A. I can't tell you.

Q. You don't even know that?

A. I don't know it, no, sir.

Mr. Holden: Mr. Teal: Aren't you speaking of the subject matter of Exhibit 21, which Mr. Hogeland offered and which is entitled, Statement showing quantities moved by and prices paid to contractors for grading for which vouchers are on file? I don't want to leave any misunderstanding. It seems to me that is an exhibit from our books; so far as we have got records of the actual prices we have paid contractors for grading it seems to be for the lines in Minnesota, and to cover all of them, running back clear into the period of at least 1881.

Mr. Teal: No, what I referred to was this: Mr. Hogeland testified (he can correct me if I am wrong) that some place above 50 per cent. of the quantities of the grading was taken actually from the books, and I asked him if the prices he used were taken from the books showing the actual price. He stated that they were not, that that was not the way you get a reproduction cost. So that I thought possibly in going over these figures again he might have run across those figures and be willing to state where they were. So he says he does not know.

Mr. Holden: I think you and I are headed exactly towards the same point. I think the testimony already shows that the Great Northern has not got full records of the original cost of a great deal of their line. But I think Exhibit 21, so far as the line in Minnesota are concerned, is a statement of the actual cost paid for the four classes of excavation.

Mr. Teal: It may be, but I think Mr. Hogeland understood what I asked, and if he does not know it is all right.

The Witness: My understanding was that you referred to the quantities of grading amounting to about 56 per cent.—

Mr. Teal: Yes.

The Witness: —which I stated were taken from our books as having been paid to contractors; and my answer to that was that I didn't know what had been paid to contractors for that work, for that grading.

Q. Eliminating, then, the question of what you paid to con-

tractors, do you know what your books show the actual cost of that 56 per cent. was, what you actually paid?

A. No, I do not, and I feel very sure the books would not show it, but the books would show what was paid the contractors, and that I understood was your question.

Q. Well, it was, but I was not limiting it that way.

A. I understood it that way.

(Recess until 2 o'clock p. m.)

Afternoon Session.

November 22, 1909.

ALBERT H. HOGELAND, recalled:

By Mr. Walter:

Q. Mr. Hogeland, is it true that these corrections were all first suggested by the investigation made by the accountants for the Commission?

A. No. Some of them were suggested by the examination which Mr. Morgan had made.

Q. Yes, but none of them were made on your own initiative?

A. I think that most of them were made on our own initiative; but they were found, during the examination which we made in connection with the accountants of the Interstate Commerce Commission and Mr. Morgan.

Q. Well, either by Mr. Morgan or by the accountants working under his direction, inquiry was directed to you which caused you to make an investigation resulting in the changing of the figures?

A. Yes, sir; the further examination that was brought about in that way has resulted in these changes.

Q. Now, it is true, is it not, that the cost of labor and material on ballasting, on grading and excavating, varied as much between 1898 and 1907 as the cost of track-laying and surfacing?

A. The cost of labor, I think, varied about the same.

Q. Then, why was it that in track-laying and surfacing, in your Exhibit 19 corrected, you took as your unit price the average for the years 1904 to 1908, and did not make the correction on excavating, the earth work, rock work (loose and solid) and hardpan, but did on the track-laying and surfacing?

A. So far as the ballasting is concerned, it did not extend back as far as the track-laying and grading; and I therefore didn't consider it necessary to make a separation. So far as the grading is concerned, I felt that the more lines we could

get distributed over the various portions of the system, the more correct the average was likely to be.

Q. Did you take all the lines during that period—all the work done during those years?

A. All of the contract work.

Q. There was no other contract work on grading than that included in your Exhibit 16 Corrected?

A. Nothing of any magnitude. In other words, there may have been some short pieces of line which we have not included, but they would be very small.

Q. Ten miles?

A. Something of that kind I had in mind.

Q. You have some here four miles and a fraction, and seven miles. Why not include all?

A. Our intention was to include all; but there were some short pieces of line—on the Iron Range more particularly, mining spurs, which I think have not been included. But the intention was to include all of the contract work in those periods.

Q. In ballasting, you commenced in 1901?

A. Yes, sir.

Q. Why did you average from 1901 to 1908, instead of from 1904 to 1908, as you did in track-laying and surfacing?

A. That could have been done, but I don't think it would have given any more correct results, except possibly it would have increased the price per yard a little. That I did not try.

Q. It was not necessary to increase either the ballasting or the excavatig, because the figures as shown come very near those you have in 15; isn't that true?

A. That is true, and especially so for the ballasting.

Q. Well, as to track-laying and surfacing, it was not true, and it was necessary, in order to get your unit figure, to take only those years; isn't that so, Mr. Hogeland?

A. It was necessary to make a separation; not necessarily only those years.

Q. But it was necessary in order to get the unit price which you had used in Exhibit 15?

A. Yes, sir, it was necessary to correctly justify the prices I had used.

Q. And what you wanted to do was to make a table from actual figures, as nearly as you could, which would justify the unit price you had made in Exhibit 15?

A. I wanted to get what was correct; but it was made primarily with the object of justifying my figures.

Q. And Exhibit 15 was made prior to the investigation shown by Exhibits 16, 18 and 19?

A Yes, sir.

By Mr. Holden:

Q. Now, the inference of Mr. Walter's questions would seem to be that you had selected certain years, or perhaps certain pieces of work, for the purpose of forcing an average price here that would justify the price you used in your Exhibit 15 as your judgment as to what the cost of reproducing would be. I wish you would state again whether, in making up your Exhibit 16, you had any such purpose as that, in taking all the work for ten years; or, in fact, in either of the other two exhibits?

A. No, sir; there was no such purpose. The intention was to take the period as shown on those exhibits, and to include all of the contract work done.

Q. Then, if I understand you, you made up your figures, as shown on Exhibit 15, first; and you set out in that exhibit your judgment as to what (as of the present time, or, perhaps more accurately, as of approximately June 30, 1908) it would cost per yard for grading and rock of the different kinds—items of that character; then you had this computation shown on Exhibit 16 prepared, which aimed to take all of the grading work for ten years that had been done all over the system; and, when that computation was made, it worked out the figures that the original Exhibit 16 showed; and that result is the actual result of putting these together and dividing the total charges by the total yardage: is that a correct statement?

A. That is correct.

Q. So, as a result of those computations, there happened to turn out what is shown on the face of Exhibit 16?

A. Yes, sir, it does turn out as shown on that exhibit.

Q. And there was no selection of items or selection of pieces of work with any purpose of getting any anticipated result, or anything of that kind?

A. Not at all.

Q. Now, was there any selection or purpose in your mind of selecting any particular years or particular period of getting at a result in advance of what the computation showed?

A. No. I simply desired to go back far enough to make the statement what I considered a fair average for the entire system.

Q. The fact that you have taken a lesser range of years for the ballasting than you took for the grading or the tracklaying and surfacing—is it your impression that if you had gone to further effort and taken a longer period for the actual work of ballasting, it would have shown any less result than the figures shown on Exhibit 18?

A. No. And I should add that Exhibit 18 includes all of the ballasting done on the lines by contract, that are shown on

Exhibit 16. In other words, it is intended to have these three exhibits (16, 18 and 19) cover the same amount of construction. On a great many of the lines the ballasting was done by the railroad company itself, and was not done by contract.

Q. That brings out the point I had in mind—that the three exhibits deal harmoniously with the amount of work involved in the tables on Exhibits 16 and 19; that is to say, as to grading and track-laying; and the ballasting, Exhibit 18 deals with all of the ballasting that was done by contract on the thirty-seven lines or items of work embraced on Exhibit 16 and 19?

A. That is true.

Q. You say that there may have been some short pieces on the Iron Range that are not included in Exhibit 16 Corrected. You also said that it was aimed to include, however, all of the grading work that was done by the contract between 1898 and 1907 inclusive. Do you know whether there were any items up on the Iron Range omitted, or is that surmise?

A. Yes; there were, as I recall, a few short stretches of spurs leading into mines.

Q. From your knowledge of that class of work, is it fairly comparable to the average work that is done in grading?

A. It is rather more expensive work than the average of the system; so the prices as shown on Exhibit 16 would be increased rather than diminished, if they had been put in.

Q. Is that kind of work, running switches up into the Iron Range mines, fairly comparable with the average grading work on a system such as the Great Northern, or is it a special kind of work which is more expensive, ordinarily, than the average work?

A. Ordinarily it has been more expensive than the average.

Q. Now, this examination that has been made since we had our last hearing, by Mr. Morgan and these gentlemen who assisted him, selected by the Interstate Commerce Commisson, was participated in by your force down there; the work was all done in the Great Northern building here, was it not?

A. Yes; so far as the examination of the vouchers and construction books, I understand it was all done in the building.

Q. There was an interchange of information by your force and the force of the other side, wherever there was a point discovered by examining these vouchers, or where there was an error in your former figures, was there not?

A. So far as we know, our attention was called to all of them.

Q. And where your attention would be called by any of the examiners of the Commission to a case where there was probably an error, it resulted, at times, in increasing your figures, and also, at times, in reducing your figures?

A. Yes, sir; both ways.

Q. Mr. Teal directed your attention to eight items, I think, on Exhibit 16 Corrected, where the grading work seems only to have had to do with moving earth work. I have added up the total number of yards involved in those eight instances, and, unless I have made an error in my calculation, I find the total yards to be 2,383,984 out of a total cubic yards of earth of 28,693,523, and out of a total yardage, all told, of 47,278.121; so it would seem to be fairly inferable, would it not, that the amount of earth work done on those seven or eight lines was a very minor fraction of the total?

A. Yes, sir.

Q. I wish you would verify my figures, after you leave the stand, and, if I have made any error that amounts to anything, call my attention to it; and I would like to have these figures, then corrected. But I want to direct your attention to that result. I think, in your cross-examinaion, you were asked by Mr. Teal whether you had made any allowance in your estimated cost of reproduction, for work done by section men, or by company force of that character. As I understand you, you have not, in figuring the cost of reproduction, dealt at all with the question of who does the work, as between the contractor and the company; your total figures have taken into account the total quantities, as you understand it, and you have passed your judgment as to prices? Your figures have not covered the source from which the money would be derived to pay for the work. Am I right in that statement?

A. That is true.

By Mr. Teal:

Q. The figures that were referred to and added up by counsel, on earth work, are the only figures on there that refer to earth work alone, are they not?

A. I presume so.

Mr. Holden: That is my understanding. I made the computation.

Q. And assuming those to be the average of the contracts that were let, what difference would it make whether it was two million or twenty million of yards that you moved, as to what the average price would be?

A. Because, as I said this morning, those particular lines, are lines of light construction, where the work is practically all done from the side, with scraper teams, and the amount of extra work involved in the way of overhaul, transportation of outfits, men and supplies, and extra bills, are small compared with work of heavier construction.

Q. Any of it in Minnesota?

A. Yes, sir.

Q. What states is it in?

A. It is in Minnesota, North Dakota —

Mr. Holden: What portion of Minnesota?

The Witness: The northwestern part of Minnesota; in North Dakota and in Manitoba. And all of the lines are such as are graded by casting in or scraping in material from the side.

Q. Where does the Billings & Northern run?

A. That is in Montana.

Q. Now, as a matter of fact, across the State of Washington, in many places, for considerable distances; in Montana, for considerable distances; in Dakota for considerable distances, and in Minnesota for cosiderable distances, these remarks that you made respecting scraper work for grading apply, don't they?

A. Yes, sir, but not to the same extent as on these eight lines that are under consideration.

Q. Just one other thought on that, please. If I remember correctly (and if not, please correct me), the average contract price for handling earth per cubic yard was 19.3 cents. Now, as I understand it, that was not on estimates; that was the actual amount paid per yard; and the other represents the actual yardage. That is correct, isn't it?

A. That is correct.

Q. To that you add what amount, in cents, to reach the amount you used?

A. I didn't arrive at it that way.

Q. I say what amount do you add to reach 31 cents?

A. It would be necessary to add 11.7 cents.

Q. Could you say, offhand, what percentage of the contract price you pay out in what are termed extras—extra work, or whatever you choose to term it?

A. What is that question, please?

Q. I say what percentage (I thought maybe you could do it quicker than I could) on a contract of earth, according to your figures, would you pay out over and above the contract price?

A. Read the question again.

Mr. Holden: You mean what percentage of 11.7 would be—

Mr. Teal: Yes. About 60 per cent., isn't it?

Mr. Donnelly: You mean what percentage of 19.3 per cent. would 11.7 be?

Mr. Teal: Yes. I thought I made it plain. You all understood it, so I must have made it plain.

The Witness: I didn't understand it that way. It would be between fifty and sixty per cent.

Q. Then I would like to ask (as you are testifying as an

expert) if in your opinion, where contracts are let for grading and the quantities are absolutely ascertained, the amount you pay in excess of the contract will average between 50 and 60 per cent.?

A. You are speaking about earth work altogether?

Q. Yes, sir.

A. Yes, sir. That has been our experience.

Q. Now I want to ask you this: when you say that has been your experience, what do you mean? that with all of your experience as an engineer, on a contract on earth work you pay 50 to 60 per cent. more than the contract price for that excavation?

A. I say that the actual cost of the work, after all of the items which are not assumed by the contractor are figured in,—that it amounts to between 50 and 60 per cent.

Q. I wish you would state what those items are.

A. Those items are overhauls—

The Master: What do you mean by that?

Mr. Teal: And the amount you allow for overhaul.

The Witness: That is what is paid to the contractor, over and above the contract price; which covers the hauling of the materials a certain distance, generally one thousand feet. That is, the contract is let at so much per yard, based on hauling the materials a certain distance; and any hauling of the material beyond that distance constitutes an overhaul.

Q. What do you pay for that?

A. That varies.

Q. What would be the average that you pay for that?

A. Generally one cent per cubic yard per one hundred feet.

Q. Have you any idea, with all your experience, how much this overhaul averages?

A. For all classes of material?

Q. Yes.

A. About four cents a yard.

Q. The overhaul, then, will average over twenty per cent. of the contract price?

A. On all classes of material probably not so much as that.

Q. No, I don't think so either, and I am not an engineer.

A. The four cents a yard would not be twenty per cent. of all classes of material.

Q. Well, confine it to this earth here; that is what we are talking about now.

A. That is practically our experience on all portions of the system.

Q. That the overhaul will amount to over twenty per cent.

of the contract price for the excavation of the material, on earth work?

A. No, I didn't say that; amounts to about four cents a yard.

Q. Well, your contract price is 19.3 cents.

Mr. Donnelly: Earth work.

Mr. Teal: I am speaking of earth work.

Mr. Dillard: He is speaking of all work.

Q. Well, we will get back to earth work now. I don't know why the overhaul should be so much more than the other, but I don't care, I am speaking of earth work.

A. It probably would not be quite so much on earth as on other classes of material. But, taking all classes of material, that has been our experience.

Q. Now, you have figures, haven't you, that would prove that? absolute figures in your office, showing your overhaul, on a series of contracts?

A. We have, on a series of contracts; but that does not take into account all of the work which has afterwards been done by the railroad company, in the way of widening cuts and widening fills, or filling bridges, all of which material, if done during the original construction, would make the overhaul run up higher than it did on the contract work.

Q. Well, let us talk about the same thing. As I understand it, this is a series of contracts that you have let at certain prices, and then the average cost runs a certain amount per yard on those contracts; is that correct?

A. Yes, sir.

Q. Isn't that what this purports to be?

A. Yes, sir.

Q. That is what I am talking about. We are not talking about the after work now. You have in your office, have you not, contracts with a number of different people in these different states, in which the overhaul that you have paid actually shows in the contract?

A. Yes, sir.

Q. Will you this afternoon submit those contracts for examination to ascertain how much this overhaul is that you have actually paid?

A. The contracts would not show how much had been paid. It would be necessary to go to the vouchers to determine that.

Q. Very well. Will you submit those vouchers for examination this afternoon, to find out what has actually been paid for overhaul?

A. That could not very well be done; but someone could examine them.

Q. Why couldn't it be done?

A Because there are so many of them.

Q. I don't care to see hundreds of them.

Mr. Holden: You say "this afternoon." We will give you anything we have. If you or Mr. Morgan will select a particular line, we will have them gone over.

Mr. Teal: I will go further than that. I will let Mr. Hogeland select his own line.

The Witness: I think I have it for all of those lines, there, if you will let me refer to some of my papers that I have here.

Mr. Holden: We will have to have the necessary time. It could not be done in an hour, or anything like that.

The Witness: I have that drawn off, but I haven't it here.

Q. You have it drawn off?

A. Yes, sir.

Q. Then there would be no objection and no difficulty in having that examined this afternoon, and having the vouchers and the contracts that go with them, so as to show that that is the overhaul charge?

A. No objection, except that we could not very well bring the vouchers up here.

Q. No, but I say we could have them examined so that could be introduced.

A. Yes, sir.

Q. I would like to have that. Now, that accounts for four cents of it. What is the rest of the eleven cents?

A. My recollection is that about three cents is covered by transportation of outfits, men and supplies, and about three cents by extra bills.

Q. Let us take up the first three cents—

A. This statement that I will show you or present, will cover all of those items.

Q. You have the vouchers for this three cents that you have paid out for transportation, have you?

A. No, we haven't the vouchers for that. That would be the charges, as I have explained to you, which have been made for transportation.

Q. Then that three cents is simply an arbitrary charge is it?

A. It is the transportation charge.

Q. How did you arrive at it?

A. It is what has been charged for the transportation of outfiets, men and materials, used by the contractors in the grading.

Q. That is at full passenger rates and full freight rates; is that correct?

A. My understanding is that it is tariff rate.

Q. Has the Great Northern any tariffs on file with the Interstate Commerce Commission for the hauling of contractors' outfits?

A. I can't tell you as to that.

Q. Or for rates of that kind at all?

A. I can't tell you.

Q. And of course you don't know if the Northern Pacific has any?

A. No, sir.

Q. Do you know whether there are such tariffs allowed to be filed?

A. No, I can't tell you.

Q. So you didn't look up to see whether you had tariffs of your own covering that sort of movement, that are on file with the Interstate Commerce Commission?

A. No, sir.

Q. Now, what was the other three cents for?

A. For extra bills, not covered by the contract price per yard.

Q. Three and three are six, and four are ten cents. Where does the other come in?

A. I was giving them to you in round figures, figuring the difference was about ten cents.

Q. And you still think, in fact you know, that on a contract for earth work, the extras that you have defined will run 60 per cent., or thereabouts (whatever it may be) over and above the contract price?

A. Yes, sir, between 50 and 60 per cent.

Q. And that is your experience as an engineer, on railroad construction?

A. Yes, sir.

By Mr. Walter:

Q. On Exhibit 16 as corrected, you made about half a dozen changes in the column headed "Earth," didn't you, that is, cubic yards?

A. Yes, sir.

Q. And hard pan, how many?

A. Three.

Q. And loose rock?

A. Three.

Q. And "Total Yardage"?

A. Six.

Q. You didn't tell us the number of changes made in the

column headed "Total Charges." Every one of them is changed, isn't it?

A. All but four, I believe.

Q. Yes—out of about thirty-five or thirty-seven?

A. Yes, sir, I believe that is right.

Q. In your Table 15 you use $900 for track-laying and surfacing?

A. Yes, sir.

Q. And in your Table 19 tracking-laying and surfacing, you averaged during the entire period, didn't you, 1898 to 1908?

A. I don't understand what you mean by that.

Q. You averaged the cost from the year 1898 to the year 1908, inclusive, on those lines?

A. Yes, sir.

Q. And you made no division of the periods before 1904 and since 1904?

A. Not in the original Exhibit 19, no.

By Mr. Holden:

Q. Mr. Walter asked you a question why you didn't state the changes in the column of total charges. You only stated such changes, in all of these figures, as I called your attention to; and those, as my questions were framed, were for the purpose of illustrating; but the difference will appear by comparison of original Exhibit 16 and Exhibit 16 Corrected—both being in the case now?

A. Yes. My understanding was we simply explained enough of that to show the nature of the changes; the principal thing to be borne in mind being that whatever changes were found to be necessary on that critical examination of the vouchers to make the total charges agree with or cover the total contract yardage, we made.

Q. Now, directing your attention to the fourth item on Exhibit 16 Corrected (Jennings to Boundary Line), the average contract price shown in original Exhibit 16 was 31 cents; and after the further examination it was shown to be 30.8 cents. There was a change then made necessary as the result of this examination, in the total charges, which will be ascertained by comparing the item on each of the Exhibits 16, and that brought about a change in the average cost per yard, from 49.1 cents in original Exhibit 16, to 58.8 cents (as it now appears) in Exhibit 16 Corrected; so that there is an instance where the difference between the average contract price and the average total cost per yard is considerably in excess of the 10.5 cents which you say is the average increase over the contract price, the difference there being,

as I roughly estimate it, 28 cents. Am I corrected about that?

A. Yes, sir.

Q. Now, is it a fact that as a result of these various revisions of these figures, in some cases the difference between the average contract price and the total average cost per yard is in excess of the average difference of 10.5 cents?

A. Certainly. Some are very much in excess, and some are lower. It would not be fair to take either one or the other. In order to arrive at any results that will correctly show an average, you must spread it over as large a period, and over as much of the system, as is possible.

By Mr. Donnelly:

Q. The mistakes that were deducted, then, as I understand it, actually worked both ways; that is to say, some of them resulted in showing that the difference between the average contract price and the average cost per yard was even greater than you had at first supposed it to be—and that is an instance of it?

A. Yes, sir, that is true.

Q. Some of the errors, then, resulted in a reduction of that difference, and some of them in an increase?

A. That is true.

By Mr. Walter:

Q. Is the column headed "Total Yardage" the entire amount of earth, loose rock, solid rock and hard pan moved on the line, Cloquet to Boylston, Deer River to Fosston?

A. Moved by contract.

Q. What about that moved by yourself?

A. That does not appear.

Q. Is it taken care of at all, in the charges?

A. Not in the charges shown in Exhibit 16 Corrected.

Q. Do you know what proportion of that you moved yourself—what proportion of the yardage on that line was moved by the Great Northern?

A. No, I cannot tell you how much additional yardage was moved by the company.

Q. And you don't know how much it cost you?

A. No, sir.

Q. So that the total charges there, or the average cost per yard, does not represent the true cost per yard of all that was moved on that line, by everybody?

A. No; it represents the cost of materials moved by the contractors.

Q. And that may be a large or small proportion of the total amount moved? You don't know?

A. It is a large proportion.

Q. You don't know how large?

A. I don't know the exact percentage, but it is a large proportion.

Q. That is true as to all those other lines mentioned there?

A. It is not true of all of them. Some of the lines have had, and did have, additional work done by the railway company itself, after the contract was let but not all of them.

Q. But you can't tell in which ones the work was all done by the contractor and none by the railroad?

A. Not positively now.

By Mr. Teal:

Q. Were you ever with the St. Paul, Minneapolis & Manitoba before the Great Northern acquired it?

A. Yes, sir.

Q. When were you with them?

A. I came with the original St. Paul & Pacific in 1879, and then from 1880 to 1884, I was with the Northern Pacific; so that from 1885 to the present time I have been with either the Manitoba or the Great Northern.

Q. Do you recollect the mileage operated by the Manitoba when you were first with them, in 1879, about?

A. At that time it was called the St. Paul & Pacific.

Q. Yes.

A. It had about six hundred miles.

Q. How much mileage did they have afterwards, the second time, you went, I mean; in 1885?

A. I can't say positively, but I should say about eighteen hundred miles.

Q. Can you state whether or not during that entire time that road was paying dividends?

A. No, I can't say.

Q. You don't know when the first dividend was paid?

A. No, sir; I do not.

Q. Do you remember whether in 1885 it was a profitable road, more than paying expenses?

A. It is my understanding it was.

WILLIAM G. JOHNSON, recalled, testified as follows:

Cross-Examination by Mr. Teal.

Q. In this case, as I have it marked, there is a statement marked Johnson No. 22, showing income and disposition of the same of the Northern Pacific Railway Company for the period of eleven years and ten months, between September 1, 1896, and June 3, 1908.

A. Yes, sir.

Q. And I want to say that is one of the best statements I

ever saw. Now, can you not prepare a statement for this year, for the year ending June 30, 1909, so as to bring this statement down to date, showing just the same facts in connection with the income and expenditures of the Northern Pacific Railway Company as is shown by this table?

A. Yes, sir.

Q. And will you do it, Mr. Johnson?

A. I certainly will.

Mr. Donnelly: That means simply to add that additional year to it?

Mr. Teal: Yes; that is so as to bring it down to June 30, 1909, because it is a very clear statement of the thing.

Q. What position do you occupy with the company, Mr. Johnson?

A. Assistant comptroller.

Q. What books are under your charge and supervision?

A. Almost everything in the accounting line, as second officer of the accounting department.

Q. Was the land grant of the Northern Pacific a part of the property that was turned over at the time of the reorganization and represented by its capital stock and bonds at that time?

A. Yes, sir.

Q. The books that are under your charge show the amount of lands that came into the possession of the Northern Pacific Railway Company, at that time, do they not?

A. Yes, sir, that is to say, not our books but the books of the land department.

Q. I mean, of course, that are under your control.

A. Well, not directly Mr. Teal.

Q. They are so that you can ascertain, are they not?

A. Yes, sir.

Q. You could also ascertain exactly the amount of money that has been received from the sale of lands since that date, can you not?

A. Yes, sir.

Q. What becomes of the money that is received from the sale of lands of the Northern Pacific Railway Company?

A. It depends as to which grant the money comes from. Generally speaking, though, it is paid over to the trustee of either one or the other mortgage.

Q. Then, it inures to the trustee of one or the other of the mortgages representing part of the capital indebtedness of the Northern Pacific Railway Company?

A. Yes, sir; either the Northern Pacific or mortgage indebtedness assumed.

Q. And as that is sold and paid off, to that extent it reduces the capital indebtedness of the company, does it not?

A. Yes, sir, naturally.

Q. I would like to have a statement filed in this case (if it can be done without much trouble, and I guess it can) showing the acreage of land which came into the possession of the new company, the amount of that land that has been sold and the application of the proceeds of the sales.

A. By proceeds, let me have it clear that you mean net proceeds after paying the expenses of administration?

Q. Yes.

A. I think it is all stated in the annual report. I think it shows there plainly.

Q. I thought if you could make as good a one as the other it would save a whole lot of trouble.

A. All right, sir.

Q. After the reorganization was not the North Western Improvement Company incorporated?

A. I believe it was after the reorganization. I am not sure after that though.

Q. You could ascertain that fact definitely, could you not?

A. I presume it can be ascertained from the records of the company.

Q. That is what I mean. Those are in the office of the company here, are they not?

A. Not in the accounting department.

Mr. Teal: I was trying to save trouble. If Mr. Donnelly does not want you to get it, he can ask somebody else to get it.

Mr. Donnelly: It is available, of course. I don't know just how much Mr. Johnson knows about it.

Mr. Teal: He will not say what he does not know, but I mean if Mr. Johnson says he will get it he will get it, and that is what I was getting at.

Mr. Donnelly: Yes, all the information that is available.

The Witness: Do I understand you want the articles of incorporation, or the date it was incorporated?

Mr. Teal: No, the date it was incorporated.

Q. If I understand it correctly, there was transferred to this company certain coal lands and certain lands not used for railway purposes; in fact, if I understood Mr. Cooper correctly, he said that substantially all property, excepting that used for railway purposes was transferred to this company. I refer now to the North Western Improvement Company. Do you know as to that?

A. Those were matters that did not come under the supervision of the accounting department, and I am therefore unable to say either yes or no to that.

Mr. Teal: Mr. Donnelly, that is a fact which I would like to ascertain.

Mr. Donnelly: I am satisfied that it is not a fact.

Mr. Teal: I say the facts about it I would like to ascertain.

Mr. Donnelly: Probably Mr. Cooper would know more about it than anybody.

Mr. Teal: What I desire to know is this: I desire to know the facts as to the creation of this company and the amount of property that was acquired by the Northern Pacific Railroad Company at the time of its organization, that was transferred to this company, and approximately its value.

Mr. Donnelly: Of course this is true as regards the land grant, Mr. Teal; that it is still in process of determination just what the grant is. Nobody could say within thousands of acres how much land came over to the Northern Pacific at the time of the reorganization or how much it owns now, because the contests are constantly going on in the department.

Mr. Teal: That I understand, Mr. Donnelly, but it can be gotten closely enough for me; and the fact that there may be some uncertainties as to the title of some of the lands would not prevent the fact from being stated as to how much property was transferred to the North Western Improvement Company and how that is represented in the shape of stock and bonds.

Mr. Donnelly: I think Mr. Cooper can give you more information on the subject than any other individual: If you yaut to have him come here, he will come.

Mr. Teal: Yes, I would like to. I assumed Mr. Johnson could, because I find these treasury securities and other matters referred to in the annual report, and I suppose that all such sheets as the general balance sheet and matters of that kind went out under the supervision of his office.

Mr. Donnelly: I have no doubt they do.

The Witness: They are made under our supervision, Mr. Teal, but we do not always gather together the facts which form the basis for these entries; they are furnished us by other departments. That is a matter, I think, that more properly comes under the notice of the Land Commissioner.

Mr. Teal: It may be. I was simply trying to get at it in this way, because I assume that being in there in the way it is and coming out of the accounting department, they would know, and I think it is of great importance to have those facts ascertained.

Q. I notice that there is an item here, Northern Pacific one-half interest in the Spokane, Portland & Seattle Railway

under construction, in round numbers $27,805,000, which purports to represent the actual advances of the Northern Pacific Railway towards the building of that road, April 12, 1909. Did your office furnish the figures for that item, Mr. Johnson?

A. Pardon me a moment. May I look at the annual report?

Q. Certainly.

A. Knowing that there has been more than $50,000,000 spent on that line I can only assume that these figures were furnished by us to whoever made up that statement.

Q. Do you remember what lines that covers—that is, under the head of S. P. & S.

A. It covers what is known as the S. P. & S. proper, that is to say, from Spokane to Portland; it includes a small navigation line on the Columbia River; a line running from near The Dalles, I think, called the Columbia River & Northern Railway and the Astoria & Columbia River Raliroad Company. I think that is all.

Q. And also the line up the Snake River?

A. That is included in the line from Spokane to Portland.

Q. The Astoria & Columbia River Railroad is a separate organization, is it not?

A. I believe it is, yes, sir.

Q. And this Columbia & Northern Railway is a separate organization?

A. I believe that is a separate corporation, yes, sir.

Q. And nowhere in your reports does there appear the earnings of any of these roads in the Northern Pacific?

A. No, sir.

Q. Their accounts are kept entirely separate and distinct?

A. Absolutely.

Q. And this is simply in the nature of an advance to these roads from the Northern Pacific?

A. Yes, sir; cash advanced for the purpose of paying the construction outlay.

Q. So that if that money were repaid to you, today on your books it stands simply as a loan, does it not?

A. As an advance.

Q. As an advance to this company?

A. Yes, sir.

Q. So that if that were repaid to you, it would have no part in this reconstructive cost of the Northern Pacific, would it?

A. Not unless you would consider the one-half mileage of the Spokane, Portland & Seattle Railway Company.

Q. Why do you consider it that way?

A. As I did not make up that statement I don't see why I should be called on to explain that. I did not prepare the figures.

Q. What different relation exists between the Northern Pacific Railroad and that road than its relation ot the Burlington?

A. In the case of the S., P. & S. the Northern Pacific has actually advanced the money to provide for its fifty per cent. ownership of that property. In the case of the Burlington, as I understand it, it is only a guarantee on the bonds issued in the acquisition of the stock of that company.

Q. And who owns the stock of the Burlington?

A. Well, I could only assume that it is held in trust as against the bonds.

Q. I understand that, but who owns the stock?

A. The Northern Pacific and the Great Northern, as I understand it,—not entirely but the majority of it.

Q. They own substantially one-half each, don't they?

A. Yes, sir.

Q. Excepting a few shares. In other words in one instance they used their credit and borrowed the money, using that stock then as collateral for the acquisition of substantially one-half ownership in the Burlington?

A. That is as I understand it.

Q. In the other instance they loaned the money directly for substantially one-half interest in the other company.

A. They advanced it for the purpose of constructing the railroad, yes, sir.

Q. You were with the Northern Pacific Railway Company, were you, when the Seattle, Lake Shore & Eastsern Railway Company existed, running out of Seattle?

A. I was in the employ of the Northern Pacific, yes, sir.

Q. Do you know anything of the acquisition of that property by the Northern Pacific, as to what it cost?

A. No, sir, except what the books of the company show.

Q. The books show that the cost of the securities for the acquisition of that property was $4,433,713.31. Do you suppose it would be possible to have a statement made by your engineer and by your land department showing what that piece of property is now valued at, the value that is put in here to the court?

A. I don't think I can answer for the other people.

Q. You would not know as to that?

A. No, sir.

Q. You don't know as to what extent the terminals of the

present Northern Pacific Railway Company were acquired through the acquisition of that company?

A. I do not.

Mr. Holden: The terminals, where, Mr. Teal?

Mr. Teal: At Seattle.

Q. There were a number of other properties acquired since 1898, since the reorganization by the Northern Pacific. You would not be able to determine how much those properties are now valued at, would you?

A. No, sir.

By Mr. Walter:

Q. At the time of the reorganization how much was paid for the property taken by the Northern Pacific Railway Company, a new corporation?

A. Taken from whom?

Q. At the time of the reorganization, when the Northern Pacific Railway Company was organized, when the last organization took place.

A. Those matters were all handled by the reorganization committee or, rather, the reorganization managers for the reorganization committee, and I have no personal information on that point.

Q. Do you know what the property was worth at that time —the value?

A. No, sir.

By Mr. Teal:

Q. Do you know what the stock of the Northern Pacific Railway Company was worth on the market, in 1897, 1898, 1899, or thereabouts?

A. I don't remember those figures offhand.

Q. Very much less than par though, was it not?

A. I believe, according to my best recollection, it was less than par.

By Mr. Donnelly:

Q. Has the S., P. & S. yielded any earnings up to the present time?

A. I could not answer that question, because the operating accounts are not kept in St. Paul; they are kept in Portland, Oregon, and we have here only knowledge as to construction matters.

Q. Mr. Teal contrasted the ownership of that line by the Northern Pacific and Great Northern with their ownership of the Burlington. In point of fact the S., P. & S. was actually constructed by those two lines, was it not?

A. Yes, sir.

Q. That of course was not true to the Burlington?

A. No, that was not true of the Burlington.

Q. Was there any special reason for its construction, in the way of congestion on the western end of the Northern Pacific, at the time it was built?

A. As I understand it, the congestion through the Cascade tunnel was such during the years 1906 and 1907 that the company was obliged to seek another outlet for its traffic to and from the coast.

Q. And in doing that this North Bank or S., P. & S. line was built?

A. Yes, sir, that is as I understand it.

By Mr. Teal:

Q. But, Mr. Johnson, what is the difference between buying a suit ready made and having it made by a tailor? You buy it in either event, don't you?

A. Yes, sir.

Q. So if you buy the stock of the Burlington that is already built, or put up the money to build another road, what is the difference as a business proposition? I mean what is the distinction you draw?

Mr. Donnelly: Nobody is undertaking to draw any distinction.

Mr. Teal: I gathered you were from the questions you were asking him.

Q. Let me ask you another question. You say it was built to relieve the congestion. As you understand it, the Northern Pacific as then built could not handle the traffic; is that correct?

A. That is as I understand it; it could not handle it satisfactorily.

Q. That is what I mean. It was absolutely necessary to have some other outlet to handle their busniess?

A. Yes, sir.

Q. That is, that they were up to the maximum as they were then built?

A. Yes, sir; owing to the Cascade tunnel principally.

Q. What was the object in buying the Burlington?

A. That deal I had nothing to do with.

Q. What did you have to do with this other deal?

A. Nothing at all.

Q. You had just as much to do with one as with the other, hadn't you?

A. Entirely.

Q. And you know as much about one as you do about the other, don't you?

A. No; I think I know a little more about the S., P. & S.

Q. You know that the congestion of the traffic out there required another road?

A. Yes, sir.

By Mr. Dillard:

Q. Doesn't the S., P. & S. serve the Great Northern and the Northern Pacific just exactly in the same way as if it were operated by them?

A. Yes, sir.

Q. On the congestion?

A. Yes, sir.

Q. Doesn't the Burlington bear the connection to those of something merely in the nature of a connecting line and an independently operated property?

A. Yes, sir, it does.

By Mr. Walter:

Q. The S., P. & S. is operated just as independently as is the Burlington, isn't it?

A. Yes, sir, it is—just as independent.

Mr. Teal: I would say that if you did not say so you would have trouble.

An adjournment was then taken until the morning of Tuesday, November 23, 1909, ten o'clock.

Room 326, Federal Building, St. Paul, Minn.,
November 23, 1909, 10 A. M.

The hearing was resumed before the special master, Hon. Frederick N. Dickson, at the above time and place.

Present: On behalf of the complainants, Mr. Hale Holden, Mr. Charles Donnelly, Mr. F. C. Dillard.

On behalf of the defendant, Mr. Luther M. Walter, Mr. W. A. Wimbish, Mr. J. N. Teal.

ALBERT H. HOGELAND, recalled on behalf of complainants, testified as follows:

Examined by Mr. Holden.

Q. Mr. Hogeland, when you were on the stand yesterday you were asked to state from memory your recollection of the approximate division of the item of 10½ cents which is shown on Exhibit 16 corrected as the difference between the average

contract price for the grading work on the lines during the period of ten years shown on the exhibit, and the average cost per yard. Since you gave your testimony have you given the matter further consideration and do you desire now to make any correction of the statement you made yesterday in giving the items of which that 10½ cents was made up?

A. Yes. I find in giving answers to Mr. Teal's questions as to how much of that increase cost was due to overhaul, extra bills and transportation charges that my memory was wrong. On returning to the office and getting the statement which had already been prepared I find the figures are as follows: The total amount paid contractors under their per yard price as shown on Exhibit 16 corrected is $15,903,754.78, being an average of 33.6 cents per yard. The total amount of the cost of over haul is $1,017,708.41, being an average of 2.2 cents per cubic yard. The total amount of extra bills is $290,994.35, being an average of .6 cents per yard. The total amount of freight and transportation charges is $3,620,022.89, being an average of 7.7 cents per cubic yard. The total charges being $20,832,480.43, or an average of 44.1 cents per cubic yard.

Q. The amount of extra bills there is but $290,000 out of a total of 20 millions and odd. Have you any statement to make as to whether or not that is the full item which probably constitutes the extra bills on that work, or not?

A. I think the extra bills were really larger than that, but in order to have no doubt but what every extra bill which we included referred to the yardage as moved by the contractors we have cut out a great many extra bills which in my opinion really belong to that yardage, but we could not identify it closely enough to be safe in putting it in to have a strictly correct statement.

Q. If, in your judgment, there should be a considerable amount of additional money spent on account of extra bills, which has been eliminated for the reason that you state, how does that work—against the interests of the company or in its favor—in the statement you have prepared, marked Exhibit 16 corrected, in showing the average price per yard?

A. It tends to reduce the average cost per yard as shown on Exhibit 16 corrected, which makes the difference between the average contract price and the average cost per yard a trifle less than what I believe it should be.

Q. The underlying purpose in that exhibit is to have so far as possible no question but that the money shown under the column of "total charges" in every instance applies to the

yardage shown under the column of total yardage moved by the contractor?

A. That is true.

Q. And wherever there has been any doubt on the subject in the matter of an extra bill or anything of that kind, according to your best judgment and understanding the doubt has been resolved in the way of cutting the charges out from the amount shown under the column of "total charges?"

A. That is true.

Cross-Examination.

Q. Mr. Hogeland, did you make a mistake yesterday in saying that it cost 4 cents a cubic yard for over haul?

A. Yes, sir; I gave you that from my memory and I evidently had in mind the figures which had been prepared for the Minnesota lines alone.

Q. Didn't you say yesterday that the result of this 4 cents was that was practically our experience on all portions of the system, in answer to a question that I asked you?

A. I believe I said something to that effect.

Q. Now that is not a fact, is it? That is not your experience is it?

A. That was too high a figure for the over haul for this Exhibit 16.

Q. Let us get back to the question you were asked. Is it a fact that your over haul averages 4 cents over the whole system?

A. No, sir, that is not the fact.

Q. Will you let me have those exhibits a moment?

The witness hands papers to Mr. Teal.

Q. Now, Mr. Hogeland, are you just as sure that this over haul by your books is 2.2 cents per yard as you were yesterday that it was 4 cents?

A. What is that question?

Q. I say are you just as sure today, this morning, that you are now right and that this over haul averages as much as 2.2 cents per yard as you were yesterday that it was 4 cents?

Mr. Holden: Mr. Teal, that is a mathematical computation on the paper.

A. What I gave you yesterday was from my memory. I gave you from my memory and my memory was wrong. Immediately on returning to my office I got the calculations

which had been made, and have given them to you this morning.

Q. Did you make these calculations?

A. No, they were made under my direction.

Q. To what extent were they made under your direction?

A. They were all made under my direction.

Q. What do you mean by under your direction?

A. By men working under my direction.

Q. It was simply your clerks' work?

A. Yes, sir.

Q. You do not mean to say that you checked over all these figures, do you, Mr. Hogeland?

A. I could not possibly do that.

Q. That is what I understood. So when you say now that this is 2.2 cents per yard, you mean that is the result of figures that have been handed to you by your clerks?

A. Yes, sir, but I have every reason to believe they are correct.

Q. Now I will ask you this: if on your entire system as an engineer you are willing to say as your opinion as an expert, under oath, that it costs you 2.2 cents per cubic yard for over haul on dirt?

A. I should say that is a very conservative figure.

Q. If your books show that that is not the case, then what would you say—your own books?

Mr. Dillard: What do you mean by his books?

Mr. Teal: His accounts and vouchers.

A. The vouchers would only show the contract work. Work which has been done by the railway company since, in the way of bank widening, bridge filling, grade changes, would not show any contract work.

Q. Have you no accounts there that show what you pay for over haul?

A. As done by the railway company?

Q. As done by anybody?

A. We have whatever is done by the contractors but not what is done by the railway company.

Q. How did you arrive at this 2.2?

A. That is all contract work on Exhibit 16.

Q. Very well, then, you say that would show under this contract work. Your books show it under that, do they?

A. That 2.2 cents?

Q. Yes?

A. Yes, sir.

Q. Now this freight and transportation is now 7.7 cents

per yard—for transportation, for freight on graders' outfit and transportation of men engaged in grading. That is what that is for, isn't it?

A. Yes, sir. You should include supplies furnished contractors.

Q. And supplies furnished contractors?

A. Yes.

Q. Now, I find, on figuring up the amount of yardage which you say is in this system, that the amount of freight paid for these purposes under this 7.7 cents would be $16,820,881. Do you think it amounts to any such sum as that, actually?

A. In a reproduction estimate it would amount to that, yes, sir.

Q. Do you think it amounts to any such sum as that actually?

A. What do you mean?

Q. Actually expended, as shown by your books?

A. The way the railroad has been constructed?

Q. Yes.

A. No, sir, I don't think it amounts to that.

Q. Do you think it amounts to anything like that at all?

A. I couldn't say whether it amounts to anything like it.

Mr. Holden: You mean the actual amount expended on account of transporting the men, material and supplies from the time the system began down to the present time? Is that the purpose of your question?

Mr. Teal: No, sir, my question is this: I want to know from the witness, who is an expert and testifying as such, whether he believes as an engineer from his experience, that the freight paid for the purposes indicated would amount to $16,820,881.

Mr. Holden: Do you mean on a reproduction of the system or the freight actually paid during the building of the system? That is where your question is not clear. Which do you mean?

Mr. Teal: I mean under any system that an engineer would use in building a road.

A. In the reproduction of the system—

Q. Now, I don't want to interrupt you, but I would like to have you answer that question.

A. I do, in a reproduction of the system, within the time taken to reproduce it.

Q. You believe that?

A. I do.

Q. Now, do you believe that that would be paid in freight for that amount of material on any road actually built, as they are built?

A. In proportion to the mileage do you mean, Mr. Teal?

Q. On that amount of stuff, that amount of material; that there is any such percentage as that, in other words, paid in actual practice in the building of a railroad.

A. Yes, sir, I do.

Q. So you think those figures are correct?

A. What have you reference to?

Q. The figures on freight.

A. As given to you this morning?

Q. Yes, sir.

A. Yes, sir, I believe they are.

Q. Where did those figures come from?

A. In the same way.

Q. What is the "same way?"

A. Produced by men working under me, taken from the vouchers and the statements which enter into the total figures shown on Exhibit 16 corrected.

Q. So that there will be no mistake about that: I understand now that these figures on freight come from vouchers that are on file in the office of your company?

A. They came from vouchers or statements or ledgers and books on file in the accounting department of the company.

Q. Either vouchers or bona fide book entries?

A. Yes, sir, or statements.

Q. What do you mean by "statements?" That is what I am getting at?

A. Statements showing the amount of transportation which had been furnished for each piece of construction.

Q. Then, they are bona fide book entries?

A. Yes, but I wanted to have that broad enough so that it would cover whatever way the information is found.

Q. And these entries, as you understand, were made at the time the work was done?

A. That is my understanding.

Q. In all these cases?

A. That is my understanding.

Q. Over the entire system?

A. Yes, sir.

Mr. Dillard: You are speaking now of mileage and not of charges, are you, Mr. Hogeland?

The Witness: I am speaking of this Exhibit 16, which I suppose he had reference to.

Mr. Holden: You are not referring to the computation you made of $16,000,000; you are referring, I take it, to the $3,000,000 of freight charges, testified to this morning?

Mr. Teal: Yes, commencing back here in 1898.

The Witness: I understood it referred to Exhibit 16.

Q. Now, at what rate was this freight charged?

A. My understanding is, as I said yesterday, it is the same rate as would be charged to any other company, which is the tariff rate.

Q. You don't know how much per ton per mile?

A. No, I can't tell you.

Q. If it is regular rates, there is a very considerable profit in it, is there not?

A. There would be over a completed railroad but there would not be in a reconstruction.

Q. Now, you have some charges in some of these exhibits for train service. What did you charge for the use of cars, in getting up these exhibits? What did you charge for a box car?

A. We took the train service as it was shown in the construction books.

Q. What did it show?

A. I can't tell you. We didn't charge a rental for equipment.

Mr. Holden: That is explained in the note at the foot of Exhibit 18.

The Witness: Exhibits 18 and 19 both have a note at the bottom to that effect.

Q. Now, for these train service charges: on what basis was that made?

A. My understanding is cost of train men's wages, fuel, oil, supplies furnished the trains engaged in that service.

Q. And how much for the cars?

A. No rental for equipment was put in.

Q. None at all?

A. No, sir; nothing for the use of the cars; that is my understanding. Wherever we found it we cut it out.

Q. Now, to come down to this dirt proposition. The price that you used was 31 cents per cubic yard?

A. Yes, sir.

Q. Under this exhibit the contract price was 19.3 cents.

A. For earth, in Exhibit 16?

Q. Yes.

A. Yes, sir.

Q. And there was 10.7 cents per cubic yard, the average of all the others on Exhibit 16?

A. 10.5 cents.

Q. That made, then, 29.8?

A. Yes, sir.

Q. Then that left 1.2 cents per cubic yard which you added to make the 31?

A. I didn't arrive at it that way, Mr. Teal.

Q. Well, is there that difference between the figures?

A. There is that difference, yes, sir.

Q. Then, in addition to that you allowed 10 per cent. for—what do you call it—emergencies?

A. Contingencies.

Q. Contingencies—which amounted to about 3 cents more a cubic yard, didn't they?

A. Yes; the 10 per cent. on 31 would be about 3 cents.

Q. And so it was by that process you arrived at 31 cents, was it?

Mr. Holden: 31 cents?

Mr. Teal: 31 cents plus this 10 per cent.

A. No, I didn't arrive at it in that way at all. I placed prices on it which in my judgment were proper prices for doing the grading. After that was done Exhibit 16 was prepared to show what grading had cost us over a period of years.

Q. In Exhibit 16 as corrected, I want to locate these places. From Cloquet to Boylston and Deer River to Fosston: what state is that in?

A. Minnesota.

Q. Where is it?

A. In the northern part of Minnesota.

Q. Rock work much, or principally the scraper work you talked about?

A. Very little scraper work and some rock work?

Q. That was high priced work, was it?

A. The grading was rather high priced work.

Q. Hibbing to Virginia?

A. That is in the northeastern part of the State of Minnesota.

Q. Farming country or—

A. No.

Q. What is that?

A. Originally a timber country and some rock work, and grading rather high priced.

Mr. Holden: I prefer you not to testify from your memory,

Mr. Hogeland, I asked you to look at the exhibits for the quantities and prices so that we will not have any more errors.

Q. Brookston to Ellis; where is that line located?

A. That is in Minnesota, northeastern part of the state.

Q. What character of country, generally?

A. That was originally a timber country; some swamp and very little rock work.

Q. Jennings to Boundary Line; where is that?

A. That is in Montana.

Q. What is the character of the country?

A. It is following a valley, and considerable rock work.

Q. Marcus to Republic?

A. That is in Washington; that is following a valley; considerable rock work.

Q. Kelly Lake to Nashwauk?

A. That is in the northeastern part of Minnesota; a little rock work.

Q. Boundary to Swinton?

A. That is in British Columbia, being an extension of the line from Jennings to Boundary, following a valley and considerable rock work.

Q. Laurier to Danville?

A. That is in Washington, following a valley of the Kettle river; some rock work.

Q. Souris to Westhope?

A. That is in North Dakota; comparatively light work.

Q. Granville to Mohall?

A. That is in North Dakota?

Q. Farming?

A. Comparatively light country, farming country.

Mr. Holden: Are those two branch lines?

The Witness: Yes, sir.

Q. Columbia Falls to Rexford?

A. That is in Montana, considerable rock work.

Q. Thief River Falls to Greenbush?

A. That is in Minnesota, the northern part of the state; rather light work.

Q. Mohall to Sherwood?

A. That is in North Dakota; rather light work, farming country.

Q. Edmore to Munich?

A. That is in North Dakota; rather light work.

Q. Swinton to Fernie?

A. That is in British Columbia, extending up to the Crows Nest Coal line, moderately heavy work.
Q. Grand Forks to Phoenix?
A. That is in British Columbia, and rather heavy work.
Q. Granby Smelter Line?
A. That is in British Columbia; moderately heavy.
Q. Towner Line?
A. That is in North Dakota; rather light work.
Q. York Line to Thorne?
A. North Dakota; rather light work.
Q. Westhope Extension?
A. North Dakota; rather light work.
Q. Forbes Extension?
A. In North Dakota; that is rather light work.
Q. Munich Extension?
A. That is in North Dakota; comparatively light work.
Q. Curlow to Midway?
A. That is in Washington; moderately heavy work.
Q. Greenbush to Warroad?
A. That is in Minnesota, northern part of the state; rather light work.
Q. Midway to Molson?
A. That is in British Columbia; rather heavy work.
Q. Boundary to Kermeos?
A. That is in British Columbia.
Q. Thorne to Dunseith?
A. That is in North Dakota; comparatively light line.
Q. Molson to Oroville?
A. That is in Washington; moderately heavy line.
Q. Sioux City to Ashland?
A. That is in Nebraska. The line has since been sold to the Burlington Company; comparatively light construction.
Q. Kelly Lake to Fermoy?
A. That is in the northern part of the State of Minnesota; moderately heavy construction; very light rock work.
Q. Aneta to Devil's Lake?
A. That is in North Dakota; that is rather light work.
Q. Oroville to Boundary?
A. That is in Washington; some rock work; moderately heavy line.
Q. Crosby Line?
A. That is in North Dakota; rather light work, farming country.
Q. Billings and Northern?

A. That is in Montana; considerable rock work and a moderately heavy line.

Q. Portage la Prairie Line?

A. That is in Manitoba; rather light line, farming country.

Q. Brandon Line?

A. In Manitoba; rather a light line.

Q. Morden Line?

A. In Manitoba; rather light work.

Q. Now can you select and state which of those roads in the State of Minnesota was built in the Mesaba Range and which was built in wet country, where it has been testified it was so hard to build, so expensive?

A. The Hibbing-Virginia Line is one that was on the Range and through some swamp country.

Q. Where did you say the Kelly Lake to Nashwauk was?

A. That is in the northeastern part of the state; that is also on the Iron Range; that is also through some of the swamp country?

Q. And Kelly Lake to Fermoy, where did you say that was?

A. In the northeastern part of the state.

Q. That was in swampy country, you said yesterday?

A. Yes, sir, a good deal of swamp on that line.

Q. Then the higher priced material on here, on earth, I notice, is either in the Mesaba Range or in the swampy country; isn't that correct?

A. Speaking of Minnesota?

Q. Yes?

A. Yes, sir.

Q. They are the highest of any rates that you paid anywhere?

A. The highest price paid for earth?

Q. Yes, I am speaking of earth?

A. Yes, sir.

Q. Now, these mileages that are in here run from 4.74 miles up to, the longest road, 194.16—the Billings and Northern?

A. Yes, sir.

Q. And there are a number of short roads in there, 14 and 20 miles or thereabouts?

A. That is true.

Q. Do you think that contracts that are let on roads of that length would be a fair basis to estimate, even under reproduction, an entire system?

A. I think they would.

Q. In the building of all of these roads you transported your own material, substantially, did you not?

A. No; on the Billings & Northern we did not.

Q. I said substantially. To what extent? How about all the rest, then?

A. On some of the others our transportation was over other lines to a limited extent; the greater part of the transportation was undoubtedly over our line.

Q. That is what I mean. Now, when you are constructing over a road in operation, do the construction trains and construction material and work of that kind have the right of way, or do the passenger trains and freight trains—the regular service?

A. It is not usually carried on in that way. The construction trains are usually on the piece of line that is not under operation.

Q. To what extent would the haul of this construction material on these lines be profitable to the company hauling?

A. What construction material have you reference to?

Q. I say construction material.

A. What I mean is freight on graders' outfits, what we have been talking about, the transportation of men engaged in grading. Where it was hauled over a line in full operation it would afford the same relative profit as any other commercial business; but where it is hauled over a line under construction I believe that the ordinary tariff rates would not afford any revenue over and above operating expenses.

Q. In preparing your valuation in this case, did you prepare the valuation for the State of Washington? It is included in your valuation, is it not?

A. Yes, sir, the State of Washington is included in this.

Q. Can you state how much your valuation was for the State of Washington?

A. No, I cannot.

Q. Have you any figures showing what that valuation was?

A. Yes, sir, I have.

Q. What do those figures show?

A. What do you mean by that?

Q. What do they show? Does that include the equipment in the State of Washington? I mean what do your figures show for the State of Washington? What items are covered?

A. All items that go into the making up of a complete valuation of the property, I think in practically the same shape as it has been gotten up in Exhibit 15.

Q. You have a copy of that exhibit, have you not,—a copy of that statement for Washington?

A. If we have not, I can furnish it.

Q. I would like to have a copy of the valuation of the Great Northern for the State of Washington introduced in evidence and marked Exhibit 3.

Mr. Holden: Mr. Teal, do you mean the whole detailed figures?

Mr. Teal: He says he has the table that was prepared here.

Mr. Holden: I know, but you are dodging the question. Do you mean the details or the totals?

Mr. Teal: All I would care for, if he has got it, is that first page. I don't care about the details beyond that; I don't care to encumber the record at all.

Mr. Holden: Your request would call for the full set of figures.

Mr. Teal: All I care for is that statement on the first page, which sets forth what I refer to as details, that is those different items, the summary, added together.

The Witness: We have that. It may not be divided exactly the same as it is in Exhibit 15.

Mr. Teal: That is immaterial, as long as you have it.

Q. What was that prepared for, Mr. Hogeland?

A. That was prepared at the time the railroad commissioners of Washington were making their valuation of the lines and we were called upon to prepare the figures for our system. In order that I may be perfectly understood: I am not sure that the statement which we furnished to the railroad commissioners of Washington carried prices or whether they simply called for quantities, but whatever we furnished I can furnish you here.

Q. The statement that you refer to had your valuation in that state?

A. That is my recollection.

Q. Do you remember how that valuation compared with the valuation made by the State of Washington itself?

A. No, but it was higher than what they made.

Mr. Teal: I don't suppose there would be any objections—I didn't have it when Mr. Hogeland was on the stand, but in connection with the valuation both of the Northern Pacific Railway Company and the Great Northern Railway Company I want to offer, and I will have copies so as to save the record from being encumbered, the findings of the State Railway Commission as to the valuation of the Northern Pacific Railway

and the Great Northern Railway in the State of Washington.

Mr. Holden: Well, that is so absolutely hearsay and incompetent—

Mr. Teal: Why do you say it is hearsay?

Mr. Holden: Wait a moment. I want to reserve the right to object to it. I want to consult with my associates here. To offer in evidence in a proceeding in this court, a court of record, the findings of the Railway Commission of Washington, without the production of any witness, or the right to these railroads to cross-examine the parties who made that report, it seems to me is the baldest kind of hearsay.

Mr. Teal: If you will pardon me, I don't think Mr. Holden would make that objection if he understood how that was done.

Mr. Holden: I understand all about it.

Mr. Teal: I wish to state to the Master how it was done. In the State of Washington, the findings of the railroad commission, unless appealed from to the Court and set aside by the Court, are conclusive upon all courts. No findings can be made by the railway commission of the State of Washington without the institution of a proceeding. These findings were found in a case entitled "In the matter of ascertaining the value of the railroads in the State of Washington," in which case the railroad commission of Washtington was complainant, the Northern Pacific Railway Company and the Great Northern Railway Company et al., were defendants. These gentlemen all appeared. These findings have never been disputed, they have never been appealed from, and I simply want to introduce them—those particular findings—in this court, to show the difference, if there is any difference, between the valuation made upon these very same properties under authority of law, after a hearing, and a complete hearing, and the court can then attach such importance to it as it pleases.

Mr. Donnelly: Mr. Teal, how can that possibly have any bearing upon the question that we have under consideration here, as to the value of the entire system? How do the findings of the State of Washington, even if you have an absolute statement of the value of the property in that state, throw any light upon the question of the value of the entire system, whom we have not undertanken to distribute its value by states?

Mr. Teal: I will tell you. On the contrary, the exhibits in this case show that is just what has been done, certainly as to some of it.

Mr. Holden: As to lands, of course, because the land has been distributed.

Mr. Teal: I will state this: that there is a difference of millions of dollars in the land values along in the State of Washington, as testified to here.

Mr. Holden: I object to that statement going in in that form. There is a difference, but the reason of the difference is that the commission of the State of Washington set aside certain portions of the land that are not now actually covered by tracks, and said that in their judgment they were not properly included in the railroad appraisal; but they expressly found the value of this so called commercial property. I do not want the impression to be left by Mr. Teal's statement that the value of the railroad property as put in by the company was millions of dollars different from that found by the State Commission. It was different because of the reason I state—that they drew the line between what they considered to be railroad property and what they considered not to be railroad property, and declined to allow the so-called commercial property to be included in the railroad values.

Mr. Dillard: Before your Honor rules on it I desire to enter in the record an objection.

The Master: I will receive it subject to your objection.

Mr. Dillard: I desire to get my objection and statement on the record, however, before it is admitted.

Mr. Teal: I would like to ask Mr. Donnelly, as the Northern Pacific submitted the same valuation, if they will submit a copy of the same matter here in this court as to the Northern Pacific Railway Company.

Mr. Donnelly: I don't know whether they did or not, but if they did and there is that kind of a summary attached to it, and it is available, I will get it and bring it up.

Mr. Teal: Could you ascertain by noon, because if not, I will want to call Mr. Darling and ascertain if it has been done.

Mr. Donnelly: I will ascertain during the noon hour.

Mr. Teal: And I will make these copies and furnish them to the counsel. I do not want to put in an entire book of stuff that does not belong to this case.

Mr. Dillard: If your Honor please I desire to make an objection, and in connection with it a statement, with your permission, in behalf of all of the defendants. I object to the introduction of the evidence, first, on the ground that it

is irrelevant; second, on the ground that it is secondary and hearsay.

Elaborating the reasons on which the objections are made, or, rather, why they are taken, I would make this further statement: that if it be true, and I do not doubt the truth of it as counsel for complainant has stated, that the statutes of Washington make the findings of the commission conclusive evidence in all courts, that that statute could apply only to the courts of Washington and could have no extra-territorial effect to apply to a suit pending in the State of Minnesota; that the legislature of Washington has no right to prescribe rules of evidence for a case pending in this court. The fact that the suit was not appealed from by any road which was a party to the proceeding before the commission is without force, because an appeal would have been taken only in the event that there was some special reason which would have induced an appeal as applied to the railroads in their operation in Washington. So the fact that no appeal was taken can have no force in showing that the evidence is admissible here, for the conditions may be entirely different from what they were there. Furthermore, I desire to make this statement: The exact accuracy as to the facts I cannot state because I am speaking now from memory, but the substantial accuracy I think will not be denied. In a hearing that was had before the Commission at Portland, Mr. Fairchild, the chairman of the Washington Commission, was placed on the standing by the O. R. & N. Company to testify and to explain these valuations.

Mr. Holden: You mean a hearing before the Interstate Commerce Commission?

Mr. Dillard: Yes, before the Interstate Commerce Commission. In making the explanation he made statements somewhat along this line—and wherein I get wrong I will thank you, Mr. Teal, to correct me—that referring particularly to the O. R. & N. there was no difference between the quantities and figures which had been offered by the engineer who had made a revaluation of the O. R. & N. except as to unit values and some items which the Commission thought ought not to be allowed, while the railroad insisted that they should be allowed; that the unit valuation of the O. R. & N. Railway Company—not the unit values but the unit quantities of the O. R. & N. Railway Company were accepted as correct after such examination as the Commission had made of them but that there were differences of opinion between the Commission and the railway as to certain items of value that should

be allowed. For instance, in that particular case the O. R. & N. allowed in its valuation for its securities as if negotiated at 90 cents on the dollar. The Washington Commission in its opinion thought that the securities ought to be taken in the same way as if they had been sold dollar for dollar. In addition to that the O. R. & N. allowed a certain rate of interest and a certain time for construction. The Washington Commission, if I remember correctly, changed the time for construction, and there were some differences between them as to the rate of interest, and possibly—of this I am not quite sure at the moment—the Washington Commission allowed for some income during the time that the road was in construction. Am I right on that?

Mr. Teal: I don't remember that, but however the findings all show what it was.

Mr. Dillard: The point that I make is this. That is enough to be illustrative. The point that I make is this, that those were matters for the original consideration, if I can use the term, of the body which was engaged in fixing the valuation. They were things of an evidentiary character, upon which that body, in fixing the valuation, had to pass and from which they had to draw a conclusion. To permit their conclusions now to be introduced in this case for the purpose of influencing the Master or the Court—I mean influencing as evidence before them, will be to substitute the conclusion of that body on certain evidentiary facts, when the very thing to be arrived at by this court is the conclusion which it shall reach from the same evidence which is submitted to it. Therefore we think, as we stated in the beginning, that the evidence is from that point of view altogether irrelevant. If I have in mind the facts, so far as the O. R. & N. are concerned, the figures that the railroad —

Mr. Teal: Pardon me, but whom are you speaking for here? I mean just now who is your objection for?

Mr. Dillard: I have offered the objection for all the defendants.

Mr. Teal: I didn't know. You were speaking about the O. R. & N. all the time.

Mr. Dillard: Mr. Fairchild's testimony was given only on the O. R. & N.

Mr. Teal: I am not offering anything on the O. R. & N.

Mr. Dillard: I know that, but I am stating that as a matter of illustration.

Mr. Teal: To illustrate what, so far as the Northern Pacific is concerned?

Mr. Dillard: To illustrate the fact that the evidence is irrelevant. And I was going on to say, when Mr. Teal addressed me, that if I have the figures with substantial accuracy, after all those differences were allowed for, in illustrating by the O. R. & N., that the railway valuation was between 24 and 25 million dollars, and the valuation of the Washington Commission, with those things all stricken out, was between $19,000,000 and $20,000,000 I think. Those are about the figures, I believe.

Mr. Teal: I would like to ask Mr. Dillard one question. When you object to this on the ground that it is hearsay, you are not objecting that this copy will not be a copy of the report as made, are you?

Mr. Dillard: Oh, no.

Mr. Teal: You are not requiring me to get a certificate?

Mr. Dillard: By no means. As far as I am concerned it may be treated in exactly the same manner as if it had the great seal of the state, and the seal of the Commission, and all.

Mr. Teal: I would only say this, without arguing it further: That at this time this is certainly a proper cross-examination, as I will argue at the right time. I will also say I do not quite see why there are such heated objections to this when I am only asking the same questions which were answered without any objection, and allowed to go into the Minnesota valuation.

Mr. Holden: The Washington figures were not offered in the Minnesota case.

Mr. Teal: No. I say in this case, when these other witnesses were on the stand testifying as to valuation, we asked the others how their valuation compared with the State of Minnesota, and there was no objection, and they stated it.

The Master: Mr. Hogeland stated in reference to this that it is higher than the Washington.

Mr. Teal: What is it?

The Master: He has already stated that his valuation is higher than the Washington.

Mr. Donnelly: You did not offer any findings of the State of Minnesota, did you?

Mr. Teal: Because they were expressly not required.

Mr. Donnelly: Mr. Hogeland has said here, as the Master stated, that his own testimony as to the value of the Great Northern in Washington was higher than that of the Commission?

Mr. Teal: If he will state how much higher, and ascertain that, I will not put in these findings.

Mr. Walter: If he will give us the figures.

Mr. Donnelly: I suppose it would be an easy matter to find out what the difference is.

Mr. Teal: I should be glad indeed not to encumber the record.

Mr. Donnelly: I do not believe that the differences were stated in the case of the State of Minnesota.

Mr. Teal: Oh, yes, they were, Mr. Donnelly.

Mr. Holden: The Minnesota figures are on a different basis. That is in litigation here in this court—not before the same master—perhaps I am wrong about being the same court, but it is in litigation here, and the figures which were referred to there were the figures offered by Mr. Morgan in the court, at which time we had an opportunity to cross-examine him. Now you are offering figures which were never taken in any court, but before a legislative body only, and that presents to my mind quite a difference. We have never, as Mr. Dillard stated, appealed from the conclusions of the Washington State Commission, for reasons which seemed perfectly satisfactory to us. We have never had a chance to deal with the basis upon which the Washington Commission arrived at this conclusion in the court. We have never dealt in court, I mean, with those figures. We do not know what the basis upon which they acted was, except as we may draw deductions. Now, the Minnesota figures are on a very different basis.

Mr. Teal: I think, Mr. Holden, you were not present at any of these hearings in Washington, were you?

Mr. Holden: No.

Mr. Teal: So you don't know what went on there.

Mr. Holden: I have read the findings.

Mr. Teal: But you don't know what the railroads did there, and what they submitted.

Mr. Holden: In a general way I do.

Mr. Teal: But at any rate, I will not take up further time in arguing this.

Mr. Dillard: He knows only by hearsay.

Mr. Teal: I was going to say so. At the proper time I will argue the matter, and, as I say, if Mr. Hogeland can state the difference, and will state the difference, and it will be stipulated by Mr. Donnelly what the difference is, I am willing to have it stated, just as it was in the Minnesota case.

Mr. Holden: We will enter our objection to that, because

that goes into trying what I think is a collateral issue here—the difference between us and the Washington Commission. If this were a proper field to make that kind of inquiry, I should not have any objection, but it seems to me it is immaterial, in addition to being hearsay, because it takes us too far afield.

The Master: You do not claim that the findings in that suit are binding in this suit?

Mr. Teal: No, but I do say this: that if a proper, legally constituted body has made an investigation as required by law, and a witness who is an expert, testifying upon that same subject, differs very radically, or differs at all, or does not differ, for that matter, from the result of the examination of a body of experts provided by law, on the very same question of facts,—I say that it goes to affect his general testimony as an expert, and it can be used for that purpose.

Mr. Wimbish: May it please your Honor, I think this evidence is clearly admissible from perhaps a little different view than that advanced by Mr. Teal, and discussed by the counsel. I have not read this myself—I have only glanced at it, but as I understand this commission has separated that property which in its opinion is properly devoted to railway uses, either now or will be in the early future, from the properties that they class as not being used for railroad purposes. They have arrived at values after a hearing. Now let us consider just that portion of the property in the State of Washington that is not devoted to railroad purposes,—the idea being to arrive at the value of that property. I do not know any way to arrive at the value of real property except by consulting the opinions of those who are familiar with values, with such other circumstances as sales, et cetera, in particular instances, as may have occurred, but that is true as shown by the testimony in this case and by witnesses for the railway companies, by Mr. Cooper for the Northern Pacific, who was on the stand. He testified as to the values in St. Paul, Minneapolis, Spokane, Seattle, and Duluth, and he stated on the stand—it appeared from his evidence—that he had had gentlemen who were presumed to be familiar with real estate values to go out and value this property and make report to him. He based his opinion on those reports. We made no objection, because we saw no other way of getting fairly at the value of the property, which property is to be valued for reproduction purposes and not for sale. So it certainly seems to me that a finding of a state commission, after a hearing, where the parties were represented and participated, as to the value

of certain property within that locality, is certainly admissible as evidence if for nothing else to be compared with evidence given by Mr. Cooper, founded upon the opinions of real estate men in Seattle as to the value of that Seattle property. Now, clearly in answer to that it would be admissible. So far as it might be admissible for other purposes, I think it is for that too. This reproduction value is a thing that has puzzled me very much. I do not know how to arrive at a reproduction value, and it does not seem to me that anybody else does. It is all hypothetical; it is theoretical; it is a matter of opinion, not a matter of fact; nobody knows. And if it is merely a matter of opinion, then it seems to me that the opinion of a Washington commission, in a case of this kind, is, as to the cost of reproduction, rights of way, etc., in that locality, is certainly admissible evidence whatever weight may be given it by the master.

Mr. Holden: Mr. Wimbish: Aren't you stating Mr. Cooper's basis rather inaccurately? While he did testify, and so did Mr. Hayden of the Great Northern, that they secured the opinions of those versed in values at the different localities, yet that they made use of them simply in molding their own judgment.

Mr. Wimbish: I think not, Mr. Holden. I certainly do not want to incorrectly state anything he said, but my recollection of the testimony (and I have not read it since I heard him on the stand) is this: that he selected particular men, and I think named them, and gave their estimates of value, and I think he further stated that he himself did not know the value of a great many of these places, but acted upon the opinions of men to whom he referred the question.

The Master: I think that is so.

Mr. Holden: My recollection does not go quite in that way. Of course the evidence will determine that subject.

Mr. Dillard: Value is a question of opinion always, in real estate.

The Master: I do not see why it would not be perfectly proper for you to ask Mr. Hogeland on cross-examination if he knows about those findings, and what the difference is, if he knows. I mean as a matter of cross-examination.

Mr. Teal: That is what I have asked him—as a matter of cross-examination, and he said he does not know.

The Master: He said his were higher, but he did not know how much higher.

Mr. Teal: In order that the court may have acurate knowledge as to how much higher, I am perfectly willing to have

Mr. Hogeland ascertain it, if he will do so, the Northern Pacific ascertain it, and stop just simply with that information. If not, I have the book issued under authority, to which no objection is made, to give the court that information. That is all I want to get in.

Mr. Holden: Let me talk to Mr. Donnelly just a moment.

Mr. Donnelly: I understand the testimony has been received subject to the objection.

The Master: Certainly, I have to receive it if it is offered.

Mr. Teal: I am trying to save the record from being encumbered, that is all.

The Master: I suppose that when you gentlemen argue the case, any testimony which any of you claim is incompetent and inadmissible, you will point out—anything you want a ruling on.

Mr. Teal: Yes.

Mr. Donnelly: In connection with Mr. Teal's request for the submission of the Washington Commission's findings, we thing the better way, perhaps—always reserving our objection—would be to prepare a statement showing, as regards the Northern Pacific Railway Company, what his own figures were as to the value of its property in that state, and showing also what the Commission's findings were as to its value in that state. Of course, the great objection, as Mr. Holden suggests, to the incorporation of the Wahsington findings in this case at this time, is that we are almost compelled, in order to explain the difference, to supplement that testimony with evidence of the basis upon which the Washington Commission proceeded, and to show wherein we conceive that basis to have been erroneously adopted. Now, of course, that testimony has been put in as to the Minnesota Commission's findings, and you are unnecessarily protracting the case without, as I think, actually furnishing any substantive evidence from which a real conclusion can be drawn, because you cannot segregate the valuations actually submitted here as to this entire property and say how much of it is apportioned to the State of Washington, and therefore you cannot draw any inference from the findings of the commission as to its value in that state, except as to particular items, in so far as they are capable of identification, and that would be true as to some of them—perhaps as to the real estate. But to introduce the whole thing now—and of course I am suggesting this simply as argumentative and as reasons why it should not be given the apparent force that it may have, because in contrasting the difference between their findings and our own

evidence, to introduce the whole thing really opens up a question that might unnecessarily protract the hearing.

Mr. Teal: Let me ask Mr. Donnelly this: Did you use any other method in the valuation in Washington than you do here?

Mr. Donnelly: I do not understand that the methods were different, but the Washington Commission in reaching its conclusions proceeded upon theories that certainly we cannot subscribe to.

Mr. Teal: I didn't ask you to do that. The question I was asking you is whether or not in Washington your method of valuation, or whatever you choose to call it, was the same as you have used all along the line.

Mr. Donnelly: I understand that it is.

Mr. Teal: Now, why does it reopen the case because the Washington Commission state the method they used? They disagree with yours, as the State Commission here have disagreed, and what of it? What is there to open?

Mr. Donnelly: They state what their theory was, but we would want to go on and show, as we did show in the case of the Minnesota findings, why that was not a proper method to pursue.

Mr. Teal: Why haven't you already shown that from your standpoint?

Mr. Donnelly: We have not dealt directly with their method of procedure, because it has never come up before this time.

The Master: All that has appeared in reference to the other commission so far in this case was simply the question, Are not your figures higher than those which they made? And the answer was, Yes, and in some instances they stated much higher.

Mr. Teal: In every instance they stated the difference.

The Master: It has not been folowed up by anything else.

Mr. Donnelly: Mr. Cooper followed it up with an analysis of the differences as regards real estate values between those arrived at in the testimony of Mr. Morgan and—

Mr. Teal: He did on the land values, but nothing else. There was no other explanation except on the valuation of the land, and Mr. Cooper can explain the difference between his valuation on the land in a moment, if he wants to.

Mr. Donnelly: He can't explain it in a moment; it will take at least half a day.

Mr. Holden: It is proper cross-examination to ask Mr. Hogeland anything about the figures he submitted in the

State of Washington. If they were on a different basis, if they were different than the figures now submitted, I concede inquiry into that would be proper cross-examination. But it is no more proper cross-examination to ask him what somebody else said about his Washington figures, or thought about his Washington figures, than it would be to ask him what some third person not a party to this case said to him on the street.

Mr. Teal: I think I can ask a question to clear it all up.

Mr. Holden: I am directing my statement to your desire to get into this case the basis of the Washington State Commission's findings. Now, I claim that is not proper cross-examination. It is mere hearsay, the statement or judgment or opinions of third parties, not of a court, and therefore it is not competent evidence in this case from any point—cross-examination or otherwise.

Mr. Teal: If you will permit me, I will ask the question.

By Mr. Teal:

Q. Mr. Hogeland, your office, under your direction, made a cost of reproduction of Great Northern Railway system, in the State of Washington, did it not?

A. Yes, sir.

Q. How much were your total figures?

A. I can't tell you from memory.

Q. To what date did that apply—as of June 30, 1908?

A. I am not clear as to what date it was brought. My recollection is it was of the date of June 30, 1908.

Q. You can ascertain the exact amount of your valuation, can you not?

A. Yes, sir.

Q. And will you do so?

A. Yes, sir.

Q. The state also made a valuation at the same time, did they not?

A. I understand they did, although all that I saw was a statement of their findings of quantities. I have never seen their statement of valuation.

Q. Do you know whether your valuation was more or less than that of the state valuation?

Mr. Holden: We object to that as not proper cross-examination, calling for hearsay, and incompetent testimony.

Mr. Teal: You just conceded that I could do that. I was trying to straighten out this record.

Mr. Holden: I did not concede that, Mr. Teal. Apparently you did not listen to what I said.

The Master: I will receive it subject to the objection.

The Witness: My understanding is that their figures were lower than ours. That I obtained from other sources, not having seen the figures which they did make.

Mr. Teal: Now, subject to the objection, and to avoid what I suppose everyone is trying to avoid—unnecessary length of this case, I will ask if it will be satisfactory for Mr. Hogeland to ascertain his figures, to take the findings and ascertain the total figures, and state what the difference is.

Mr. Holden: That was Mr. Donnelly's suggestion.

Mr. Teal: He said to make a statement. I thought you meant a long statement.

Mr. Donnelly: Oh, no.

Mr. Holden: We will have prepared, subject to the objection we have made, that it is not competent here, a tabulation contrasting the railroad figures and the figures of the state commission, reserving our right to object to it later on.

The Master: To object to it as immaterial?

Mr. Holden: And upon the grounds we have urged here to-day.

Mr. Teal: Then, as I understand it, counsel for the complainants will prepare this table and submit it to me?

Mr. Holden: Yes, sir.

Mr. Teal: I will say that if that table is satisfactory, I mean if it states the facts (as I presume it will) as appears in here, then I will not make the copy from this statement. If it does not, I will make a copy of it and file it here and send it to counsel. That will avoid encumbering the record.

Mr. Holden: Very well.

By Mr. Teal:

Q. In your estimate of reproduction you figured that the equipment would run at interest for two years?

A. Yes, sir.

Q. Why?

A. That was to anticipate the construction of the equipment, the money having to be on hand approximately at the time the orders were placed, and also to cover the use of the equipment after it had been received and used for construction purposes, before the line was put into opration.

Q. I understood you to state that all of this equipment as figured was absolutely new in the shops?

A. The valuation which we have put in is based on new equipment.

Q. Absolutely new?

A. Yes, sir.

Q. Not used?

A. Yes, sir.

Q. And you allow interest on it for two years at six per cent.?

A. Yes, sir.

By Mr. Holden:

Q. Mr. Hogeland, speaking about the interest on equipment, as I recall it, you estimated a period of eight years for the reproduction of the system. Am I right in my recollection that you testified that the purchases of the equipment would begin at the end of the fourth year, and that this charge of two years interest at six per cent. was an average over the period of four years for the total sum required by the equipment?

A. No, I don't think I testified in that way.

Q. I don't recall, but I had it in mind that it was testified that the equipment would begin to be purchased at the end of four years and that the total amount of money required to buy equipment would be spread over the last four years, whereby there would be a total amount used for an average period of two years at the legal rate of interest, six per cent. And if I am not right, say so?

A. I did not testify in that way, and I do not have it in my mind that way.

Q. Then, I am wrong about it.

A. My idea was that the purchases of equipment would begin pretty soon after construction was undertaken, and would be carried along during the whole period of reproduction.

Q. Then the money would actually be out longer on the basis that I suggest, if you begin the purchase of equipment soon after construction?

A. I did not figure but what some portions of the road would be put in operation before the entire eight year period was passed, but that any portions that were put in operation during that period would not be operated at a profit.

Q. Yes I understand that. Then, if I understand you, you have only taken two years at six per cent. on the amount necessary to purchase the equipment?

A. That is true.

Q. In speaking about the figures or the cost of overhaul, in your testimony this morning, you said it was 2.2 cents; is that right?

A. Yes 2.2 cents. Now, you said the system. I want to confine that to Exhibit 16.

Q. That is for lines shown on Exhibit 16 Corrected?
A. Yes, sir.
Q. Have you in mind the corresponding figures which were shown in the Minnesota rate case, and which perhaps were in your mind yesterday?
A. Yes, sir. They were 3.3.
Q. The figures there were 3.3 cents?
A. Yes, sir.
Q. For overhaul?
A. Yes, sir.
Q. Mr. Teal asked you a question—I am not clear what he said, but it left the impression on my mind that in the transportation of material, probably the men, materials, outfits and supplies for graders, referred to on the work done on Exhibit 16—most of that was probably done over the Great Northern lines, and not over foreign lines. Was it in reference to Exhibit 16 that that question was asked?
Mr. Teal: Exhibit 16.
Q. Is it not a fact that in the construction of the largest item on Exhibit 16, the Billings & Northern, that a very large amount of transportation was paid for by the Great Northern over foreign lines?
A. Yes, sir, that is true of that particular line.
Mr. Teal: I think he testified to that yesterday, and I don't object to the counsel testifying, but this is his witness and I don't see why he should ask if this is not a fact and if that is not a fact.
Mr. Holden: I think it has all been in testimony here before.
Mr. Teal: He has testified about that, and I do not think it is necessary to lead him up to it.
Mr. Holden: I think at the last hearing that was gone over. Do you recall about that?
Mr. Teal: Yes, it was gone over at the last time.
The Master: Yes, I think it was.
Mr. Teal: And it was also gone over this morning.
By Mr. Dillard:
Q. Mr. Hogeland, you have a general knowledge of the Pacific system, that is, the O. R. & N., the O. S. L. and the U. P., have you not, from Omaha out to Portland?
A. Yes, sir, I have been over the main line of the Union Pacific and the Southern Pacific.
Q. You know the country through which it passes?
A. Yes, sir.
Q. The same conditions as to increase and value and—

Mr. Teal: Now I object again. Let him ask the question. I don't want these leading questions. Let the witness say what he knows. I object to that form of questions to a witness of this character—an expert witness.

Mr. Dillard: I think if you had heard the question you would not have objected to it, but I will put it to suit you.

Q. Regarding the increase in lands there which were used for rights of way and terminals in the cities, as applied to the Union Pacific, that whole western country, whether it is the Union Pacific or the O. R. & N. or the O. S. L., or anything of that kind, do or do not the same facts as to increase in values apply to all those railroads?

A. My judgment would be that practically the same increase would apply.

Q. You keep up with the Union Pacific system, the reports and things of that kind with regard to it, in a general way, do you?

A. Yes, sir, I read the extracts of the reports as to what has been done on the Union Pacific.

Q. Of course you have made no revaluation of that, you can't tell, you do not know, and I have not asked you; I would not undertake to have you testify except on this general question: from what you know of those porperties, as to their general physical condition, how would they compare as to being as good or not so good as the Northern Pacific or Great Northern? Just state about it in a general way, if you know.

A. From the trips that I have made over the Union Pacific system and the information I have obtained from reading their reports, my opinion is there is no substantial difference in the properties, as to their physical condition.

Q. If an effort were made to reproduce that system, in your judgment as an engineer, should or should not the same general method be applied to it in reproduction that you have applied to the Great Northern Railroad?

A. That would be my judgment.

Q. In other words, you think that is a method of reproduction that should apply to railways generally?

A. Yes, sir, that is my opinion.

Q. The same general method. What comparative result it would produce on the Union Pacific it would be impossible for you to say, would it not, without knowing the values and quantities?

A. Yes, sir, it would.

Q. Considering that railroad today as an active, going concern, of course you could not come within any close approxi-

mation of it, but I would like your judgment, for whatever it may be worth, as to whether it would be, treated as a going concern, something like the value of the Northern Pacific and the Great Northern?

A. My judgment is that there would be no substantial difference.

By Mr. Teal:

Q. Mr. Hogeland, you of course are familiar with the Union Pacific Railway, or you would not be testifying—this system you are speaking of, the Union Pacific and the O., R. & N.?

A. I am familiar with the main line of the Union Pacific from Omaha to San Francisco—the Union Pacific and Southern Pacific.

Q. You were asked about the Short Line and the O., R. & N.?

A. I was going to tell you what I am familiar with. And with the O., R. & N. between Spokane and Portland, and with the Southern Pacific between Portland and San Francisco, and between San Francisco and Los Angeles. Those are the portions that I am somewhat familiar with.

Q. Now let us take up the O., R. & N. The O., R. & N. runs along the Columbia river, doesn't it, for a large part of the way?

A. Yes, sir, for a considerable distance.

Q. And the Columbia river, prior to the building of the railroad, was operated by steamer lines, wasn't it?

A. That is my understanding, yes sir, for a portion of the distance.

Q. When that railroad was constructed, do you know whether the steamer lines were kept in operation and the different pieces of road operated in connection with it was constructed?

A. No, I can't tell you as to that.

Q. Do you know whether or not during that time it earned the greatest profits it ever made in its history—during the time of construction?

A. No, sir, I can't tell you.

Q. If it did, would you build that so it would not make a dollar, or would you build it so it would make money as it went along,—on your basis of engineering?

A. I think that all natural advantages would be taken care of, would be employed in the reproduction of that piece of line, the same as they would in any other construction following a navigable river; the same as the Great Northern and the North-

ern Pacific did in the construction of the Spokane, Portland & Seattle?

Q. And you think, then, that the reconstruction of the O., R. & N. on your basis, assuming the conditions of course as they were and as they are, would take how many years to build it?

A. I was speaking of the entire Union Pacific system.

Q. Well, let us take that end of it?

A. I have not gone into the details of that. I am simply answering in a general way, taking the entire Union Pacific system.

Q. Now let us jump down to San Francisco. You, of course, remember when the Central Pacific was built from Sacramento—wasn't it?

A. I can't give you the details of when it was built.

Q. You don't know, then, whether or not a line of steamers was operated by the Central Pacific from Sacramento to San Francisco before the line got into San Francisco, and they were carrying both freight and passengers?

A. No, sir.

Q. Now let us assume a hypothetical railroad there; that you have the problem to build a railroad from San Francisco to a connection out at Ogden, where they made their connection. You have at one end of the railroad a large city, on a bay, connected with a navigable stream, and you commence your construction at Sacramento, at substantially the head of navigation. Do you think that you would build that in such a way that that would make no money in that time? Is that the way you would build it? Or would you use the navigable streams and make your connections that way pending the building?

A. You would certainly use all natural means of communication that you could.

Q. And if that would produce income and results and benefits, you would want to take advantage of it, wouldn't you?

A. Certainly.

Q. You have heard of Leland Stanford, have you not?

A. Oh, yes.

Q. And C. P. Huntington?

A. Yes, sir.

Q. And the Crockers?

A. Yes, sir.

Q. They were the early builders of the Central Pacific?

A. Yes, sir, their names are familiar.

Q. And was the Central Pacific in their hands reputed to be a money making road in its early history?

A. I can't tell you as to that.

Q. Now, not to unduly prolong this investigation, but going down, you know the river is navigable to Stockton, don't you?

A. I don't know how far it is navigable. It is navigable for quite a distance.

Q. If you were building a road from Stockton down through the rich valley south of there and eventually intended to reach San Francisco, would you use the means of communication by water between Stockton and San Francisco in your building, or would you just simply say, "I will not use it until it is all done to San Francisco?"

A. No. You have misunderstood the entire scheme if you think that is the plan.

Q. I think that is your plan?

A. We propose in all my reproduction ideas to use any and all existing means of communication. That would mean other railroads or waterways in existence, anything that existed, considering that the system under construction had been obliterated.

Q. Then going out from Omaha, through the Nebraska country, rebuilding the Union Pacific system under the same system, do you think it would be possible, under your scheme of reproduction, to build a railroad out in that section, through the territory that the Union Pacific runs, through the cities it runs, with its locations and connections, and not make any money during the time of building?

Mr. Holden: Do you mean net money or gross money?

Mr. Teal: I mean net money.

Q. Do you think that would be possible, under any plan of operation?

A. That would depend on the length of time the reproduction extended over, applying the same method to the Union Pacific. I doubt whether any of it would be operated at a profit during the reconstruction period.

Q. Then, under your theory of reconstruction, so that I and the court will understand that plainly, your method of reconstruction would result, so that you have grave doubts, even in a section like Nebraska, that you could get any profits from operating any part of that railroad during the construction?

A. Oh, there might be certain stretches that would be operated at a profit, but taken as a whole, during the reproduction period, my opinion is that it would not be operated at a profit.

Q. Now, perhaps we are geting to nearly an understanding. Would any portions, in your opinion, be operated at a profit during the period of reconstruction?

A. I think my previous answer answers that; that there might be certain portions which would be operated at a profit but taken as a whole, I do not consider that it would be.

Q. Not even enough to pay the interest on construction?

A. Well, if it is not operated at a profit, you would not have any money to apply on interest.

Q. Well, I call interest a charge. We are speaking about net profits now, over and above everything?

A. I understand. It would not be operated at a profit—and when I say "profit" I mean over and above the operating expense.

By Mr. Walter:

Q. Do you know of any road that would make profits under your plan of reproduction?

Mr. Teal: During the reconstruction?

Mr. Walter: During the reconstruction period. During the time of reproduction.

A. What have you reference to? A system comparatively the same as the systems we have under consideration?

Q. To build a road, reproduce a road of substantial amount, following the plan you have laid out for the Great Northern.

A. If you take short stretches of line, the construction period is soon over and they are turned over for operation and the business grows, and it is not long before the lines are on a paying basis.

Q. Your period of reproduction would be short in that case, too?

A. If you take individual pieces.

Q. I am speaking now of the period of reproduction, during that time, whether the line is short or long. Would it earn any money during that period, any line that you know of, following your plan?

A. Oh, yes; I am quite sure there would be some lines that would.

Q. Name some of them?

A. You are speaking now of the Great Northern?

Q. No, I am not speaking of the Great Northern at all; I am ignoring it, the Great Northern. You say it would not.

A. I had in mind certain portions of the Great Northern which probably could be operated at some profit.

Q. And would pay the operating expenses and interest on the money invested in those particular parts of the line?

A. Not necessarily the interest, but probably show some profit over operating expense.

Q. To be applied to interest?

A. Yes.

Q. Now, aside from the Great Northern, and aside from the Union Pacific, which you say would not earn anything, do you know of any railroad operations that during the time necessary to reproduce them under your system would earn anything above operating expenses?

A. Oh, I can think of some lines through well settled country that might earn a little something during the reproduction period, but in my opinion not more than what would pay operating expenses.

Q. When did you first begin to consider the reproductive cost of the Union Pacific system?

A. My attention was called to it during the Spokane trial at Portland.

Q. In what way?

A. By Mr. Cotton, in a general way.

Q. What did he ask you to do—make an investigation?

A. Not necessarily; he asked me my opinion.

Q. Just asked your opinion in an offhand way?

A. Yes, sir.

Q. Without any preliminary investigation by you?

A. Why, he could ask my opinion without any investigation.

Q. From that time on have you made any investigation of the Union Pacific system for that purpose?

A. Not for that purpose, no sir.

Q. Do you know any more about the Union Pacific system than you do about the Santa Fe or the Milwaukee or the Northwestern?

A. A little more, yes, sir.

Q. How much more?

A. What do you mean by that?

Q. How much more consideration have you given to the cost of reproduction of the Union Pacific system?

A. I say I have given some more consideration.

Q. Have you any idea as to the Milwaukee's cost of reproduction?

A. The entire system?

Q. Yes.

A. No, sir, I have not.

Q. The Northwestern?

A. No, sir.

Q. Have you of any system other than the Great Northern?
A. In detail? That is the only one I have gone into in detail.
Q. Or in the aggregate?
A. No, only in a general way, as I have testified.
Q. When were you last over the Union Pacific Railroad?
A. The entire system?
Q. Yes.
A. Oh, it has been a great many years since I have been over the entire system; I have been over a portion of the line.
Q. Simply as a passenger?
A. Yes, sir.
Q. That is the extent of your knowledge?
A. Except the examination of the reports. It is simply general knowledge.
Q. What reports of the Union Pacific have you examined?
A. The annual reports that appear and are tabulated in the railroad journals.
Q. You see that as to all other lines in this coutnry, do you not?
A. A number of other lines, yes, sir.
A recess was here taken until two o'clock p. m.

AFTERNOON SESSION.

Mr. Donnelly: Mr. Teal, Mr. Johnson has prepared, at your request, a statement bringing down Johnson Exhibit No. 22 to date, and showing the income for the year 1909 in addition to that shown for the previous years. I suppose in order not to encumber the record that the original exhibit might be withdrawn?

Mr. Teal: Excepting that the original record has a number of details attached to it. This can be attached right to the top of the original exhibit.

Mr. Donnelly: This is an exact copy of the original exhibit No. 22.

Mr. Teal: I had some details on it.

Mr. Donnelly: It may be offered in evidence, in lieu of Johnson Exhibit No. 22, the statement bringing the record of the income of the Northern Pacific Railway Company and its disposition down to and including the year 1909.

The Master: June 30?

Mr. Donnelly: June 30, 1909, and the original exhibit No. 22 may be withdrawn.

The Master: This is substituted?

Mr. Donnelly: Yes. Now, Mr. Teal, you asked for a detailed statement of the treasury securities of the Northern Pacific Railroad Company down to June 30, 1909. Mr. Johnson has prepared that, and that may be offered in evidence.

The same was marked Complainant's Exhibit 28.

COMPLAINANT'S EXHIBIT 28 (JOHNSON).

NORTHERN PACIFIC RAILWAY COMPANY.

TREASURY SECURITIES, JUNE 30, 1909.

Par Value.	Title of Securities.	Book Value.
$ 6,005,000.00	Northern Pacific Ry. Co. prior lien bonds	$ 6,179,090.98
7,449,000.00	Northern Pacific Ry. Co. Gen'l lien bonds	5,573,730.61
191,000.00	Nor. Pac. Ry. Co., St. Paul Duluth Div'n bonds	190,738.75
3,685,000.00	Northern Pacific—Great Northern Jt. bonds	3,624,875.37
2,477,000.00	Washington & Columbia River Ry. Co. bonds	2,394,612.50
62,000.00	Minnesota Transfer Ry. Co. first mtge. bonds	62,000.09
7,000,000.00	Northwestern Improvement Co. bonds	7,000,000.00
74,000.00	Northern Pacific Terminal Co. of Oregon bonds	85,100.00
5,000,000.00	Chgo., Burlington & Quincy R. R. Co. general mortgage bonds	4,941,487.50
100,000.00	Colorado & Southern Ry. Co. refunding and extension bonds	100,013.94
2,127,200.00	Clearwater Short Line Railway Co. stock	2,127,200.00
1,000,000.00	Washington Central Ry. Co. stock	221,279.94
12,500.00	Chgo., Burlington & Quincy R. R. Co. stock	25,093.54
59,850.00	St. Paul Union Depot Co. stock	59,850.00
136,800.00	Lake Supr. Terminal & Trfr. Ry. Co. stock	97,001.00
300,000.00	Missouri River Railway Co. stock	300,000.00
50,000.00	Connell Northern Railway Co. stock	50,000.00
10,000.00	Western Dakota Railway Co. stock	10,000.00
10,000.00	Shields River Valley Railway Co. stock	10,000.00
2,775,000.00	Northwestern Improvement Company stock	2,775,000.00
$38,524,350.00	Total	$35,827,074.13

Mr. Donnelly: You also asked for a statement of miscellaneous income derived from interest on account, cash in bank, and investment in securities September 1, 1896, to June 30, 1909. Mr. Johnson has prepared that statement and I now offer in evidence a copy of it which may be marked Johnson Exhibit No. 29.

The statement was so marked.

COMPLAINANT'S EXHIBIT 29 (JOHNSON).

NORTHERN PACIFIC RAILWAY COMPANY.

MISCELLANEOUS INCOME DERIVED FROM INTEREST ON ACCOUNTS, CASH IN BANKS AND INVESTMENTS IN SECURITIES—SEPTEMBER 1, 1896, TO JUNE 30, 1909.

INTEREST:	
On bank balances and accounts	$ 6,895,867.25
St. Paul & Grand Trunk Ry. Bonds	1,100.00
Superior Consolidated Land Co. Bonds	2,750.00
Northwestern Improvement Co. Bonds	2,347,666.66
Atchison, Topeka & Santa Fe Ry. Bonds	6,160.00
Southern Pacific Ry Co	19,600.00
Oregon Short Line Railroad Co. Bonds	3,133.33
Chicago, Burlington & Quincy R. R. Bonds	66,666.67
Colorado & Southern Ry. Co	1,429.99
Northern Pacific Terml. Co. Bonds	4,440.00
DIVIDEND:	
Northern Pacific Express Co. Stock	3,668,433.89
Rocky Fork Coal Co. Stock	23,133.00
Oregon Railway & Nav. Co. Stock	239,105.00
Northern Pacific Coal Co. Stock	268,218.43
Puget Sound & Alaska S. S. Co. Stock	92,981.14
Northwestern Improvement Co. Stock	777,000.00
Chicago, Burlington & Q. R. R. Co. Stock	430.00
Stumpage cut from lands in Washington	7,492.99
Net receipts from Town Sites	15,347.52
Total	$14,440,975.87

St. Paul, Minn.,
Nov. 23, 1909.

Mr. Donnelly: Yesterday, Mr. Teal, you asked Mr. Cooper to prepare a statement of the acreage of land that came to the Northern Pacific Railway Company at the time of reorganization, the disposition that had been made of it, the cash that had been realized from it, and the disposition that had been made of the cash. That statement has not as yet been completed. Mr. Cooper will complete it and sign it, and I assume that it will not be necessary to have him testify, but simply file it in connection with his testimony and as a part thereof.

Mr. Teal: Yes.

HOWARD ELLIOTT, recalled as a witness on behalf of the complainants, testified as follows:

By Mr. Donnelly:

Q. Mr. Elliott, you are the president of the Northwestern Improvement Company as well as of the Northern Pacific Railway Company?

A. Yes, sir.

Q. Did you prepare and submit in the Minnesota rate case a history of the origin and development of the Northwestern Improvement Company?

A. Yes, sir.

Q. I show you Exhibit 29 and ask you to state if that is a copy of the statement that was submitted in that case.

A. To the best of my knowledge and belief, this is a copy of the statement that I submitted in my testimony in the Minnesota rate case.

Mr. Donnelly: Then we will offer that in evidence, in response to your request, Mr. Teal, for a statement, of the history of that company.

A Brief History of the Origin and Development of the Northwestern Improvement Company.

When the Northern Pacific Railway Company acquired the property of the Northern Pacific Railroad Company in 1896, the title to considerable property in St. Paul located between Fourth and Sixth streets, purchased and paid for by the Northern Pacific Railroad Company at a cost of $849,881.38 stood in the name of various individuals as trustees; said property was purchased for the purpose of providing additional terminal facilities for the Northern Pacific Railroad Company, the great portion of it is now in use for that purpose, and has been conveyed by the Improvement Company to the Railway Company. The portion of this property still owned by the Improvement Company appears in the list of assets attached as "Town Lots, St. Paul, Minnesota."

Also the title to certain property in Minneapolis near the Union depot, purchased and paid for by the Northern Pacific Railroad Company at a cost of $308,746.22, stood in the name of the Minneapolis Terminal Company; the property in question was acquired for the purpose of establishing a union passenger depot, in conjunction with other railroads, and is still held for that purpose; it is included in the list of assets of the Improvement Company as "Town Lots, Minneapolis."

Also, immediately after the Northern Pacific Railway Company acquired the property of the Northern Pacific Railroad Company, it sold certain of its outstanding land contracts covering sales of its land grant lands, for $1,223,000, using the money received therefrom to purchase and retire General First Mortgage bonds and Pend d'Oreille Division bonds of the Northern Pacific Railroad Company; bearing interest at 6 per cent., and redeemable from the proceeds of the sale of the land grant. The land contracts, or the bulk of them, were later acquired by the Improvement Company at the price at which they had been sold. Such of the contracts as have not been paid up, are included in the item of assets of the Improvement Company as "Accounts Receivable."

In October, 1897, the Northwestern Improvement Company was organized under the laws of New Jersey for the immediate purpose of acquiring and holding the properties at St. Paul and Minneapolis, and the land contracts above referred to, and said properties were conveyed to it; the Improvement Company paying therefor $2,000,000 of which $1,000,000 was in capital stock and $1,000,000 in four per cent. debenture bonds; being the entire amount of the captail stock and bonds issued by the Improvement Company at the time of its organization.

When the Improvement Company was organized, no one anticipated that it would attain its present magnitude, but, as time went on, it was found convenient and desirable that in a growing region, an organization should exist, adapted for and capable of, handling enterprises, not coming under the head of transportation, but which would be helpful in developing the business of the railway company and the territory tributary to it, and at the same time, if the enterprises were successful, make a profit that might ultimately go to the latter's stockholders. The original scope of the Improvement Company was enlarged to meet this situation. To pay for additional properties acquired, it has from time to time increased its capital stock and issued additional bonds; the amount of its capital stock being March 31, 1909, $2,775,000, and of its bonds $8,298,140.57, all of which stock and bonds are owned by the Northern Pacific Railway Company and held in its treasury, excepting bonds to the amount of $1,298,140.57 deposited with the trustee of the St. Paul-Duluth Division mortgage, as hereinafter explained.

One of the earlier important transactions of the Improvement Company was the purchase in October, 1897, from the

Railway Company of all of the land grant lands of the latter then unsold, between the Missouri River and Glendive, Mont., aggregating about five and a half million acres for a consideration of $1,755,000. The purpose of this sale was to provide money to pay off the Missouri River Division mortgage of the Northern Pacific Railroad Company, which bore six per cent. interest, and which could only be paid off from the proceeds of the sale of the mortgaged lands. Such of the lands as are still unsold appear in the list of assets of the Improvement Company as "Lands, Western North Dakota and Eastern Montana."

In furtherance of the plan of divesting itself of all outside properties not directly used for the operation of the railroad and vesting them in the Improvement Company, the Railway Company, in July, 1899, sold all of its coal properties to the Improvement Company; said properties at that time being located at Roslyn, Wash., Timberline, Mont., Bull Mountain, Mont., and in Stark County, N. D. The Improvement Company has since acquired by purchase from various parties additional property at Roslyn, Wash., and has also made a lease of some coal lands at Clealum, Wash.; it acquired from the Seattle & San Francisco Railway & Navigation Co. the coal property at Ravensdale, Wash., and supplemented the property so purchased by purchasing from the Railway Company some of its land grant lands now a part of the Ravensdale coal field; it purchased from the Railway Company the lands constituting the Melmont, Wash., coal property, which were a part of the Railway Company's land grant; it purchased from the Union Pacific Coal Company, Chestnut Coal Company, Bozeman Coal Company, Mountainside Coal Company, Northern Pacific Railway Company, and various other parties, the property which now constitutes its Chestnut and Timberline coal properties; the principal part of its Red Lodge and Bear Creek coal properties was acquired by the purchase of the Rocky Fork Coal Company, which purchase has been supplemented by purchases made from various other parties since. A detailed statement of the various coal properties owned by the Improvement Company would be voluminous because of the large number of different purchases made, would require some time for its preparation, and would have to be made up from the records of the comptroller's office at Tacoma, Washington; it would take perhaps two months to prepare, as it would involve the examination of the records of every purchase. These properties appear in the list of assets of the Improvement Company under the heading of "Coal Properties."

Another of the large transactions of the Improvement Company was the purchase from the Railway Company of 103,194.35 acres of coal lands, or supposed coal lands, in the State of Washington. The sale included all lands known to contain coal, also all lands in their vicinity, and undoubtedly a considerable portion of them will prove to be valueless as coal property, when explored. The portion of these lands not disposed of appear in the list of assets of the Improvement Company under the heading of "Lands, Western Washington."

Still another important transaction was the acquisition by the Improvement Company of the land grant property of the St. Paul & Duluth Railroad Company. When the property of the St. Paul & Duluth Railroad Company was purchased by the Northern Pacific Railway Company, the unsold portion of the land grant of the Duluth Company was bought by the Improvement Company, and it deposited as security for the purchase price with the trustee of the St. Paul-Duluth Division mortgage $4,000,000 of the debenture bonds of the Improvement Company. These bonds are redeemed and cancelled from time to time as payments are made to the trustee of the St. Paul-Duluth Division mortgage of the net proceeds from the sale of the lands. The amount so redeemed up to March 31, 1909, was $2.701,859.43, leaving still to be redeemed $1,298,-140.57. This item appears in the list of assets of the Improvement Company under the title "Lands in Northern Minnesota," and the amount of the unredeemed debenture bonds referred to is included in the amount of debenture bonds outstanding.

May 5, 1909.

Statement of Assets of the Northwestern Improvement Company as Shown by Its Books March 31, 1909.

Real Estate, Excepting Coal Properties	Book Value.
42,605.05 acres of lands in Northern Minnesota,	$1,312,740.42
1,519,060.79 acres lands in Western North Dakota and Eastern Montana,	285,710.28
99,058 acres lands in Western Washington,	528,333.23
320.71 acres in Coos County, Oregon,	2,560.00
Town Lots in St. Paul,	121,500.30
Town Lots in Minneapolis,	131,678.15
Town Lots and water front property at Superior,	240,014.75
31,214.04 acres on Cuyuna Range, in Crow Wing County, Minn., owned or leased,	395,255.80
Townsite, dwellings and boarding house at Paradise, Mont.,	75,166.79

Townsite, dwelling houses and boarding house at Laurel, Mont.,	67,391.06
Townsite and dwelling houses at Dilworth, Minn.,	23,014.79
Townsite at Manitoba Junction, Minn.,	886.31
Land for Townsite at Turah, Mont.,	9,188.34
Town Lots and unplatted property at Tacoma, Wash.,	125,390.66
Town Lots at Portland, Oregon,	18,073.94
Tide Lands, Seattle, Wash.,	26,231.40
Water Power at Sunset Falls, Wash.,	10,082.33
Water power at Yellowstone River, Mont.,	7,225.00
Warehouse on Block 186, Seattle, Wash.,	163,597.56
Dwelling houses at Pasco, Wash.,	43,843.15
Townsite at Gwyther, North Dakota,	1,002.50
Total,	$3,591,886.76

Coal Properties.

Mines in Operation.	Book Value.
Roslyn and Clealum, Washington,	$1,276,248.33
Ravensdale, Washington,	992,410.67
Melmont, Washington,	272,913.40
Chestnut and Mountainside, Montana,	553,097.53
Red Lodge, Montana,	1,342,468.68
Coal Bunkers, Seattle, Washington,	62,068.10
Fuel Briquetting Plant, Tacoma, Washington,	29,072.56
Material and supplies, coal department,	341,869.63
(Coal Lands.)	
Bear Creek District, Mont.,	103,669.02
Bull Mountain District, Mont.,	251,405.38
Livingston-Timberline District, Montana,	142,141.23
Lignite District, North Dakota,	2,740.44
Total,	$5,370,104.97

Securities Owned.

	Par Value.	Book Value.
18,496 shares Northern Pacific Ry. Co. Stock,	$1,849,600.00	$2,633,877.91
30,000 shares Port Townsend Southern R. R. Co. Stock,	3,000,000.00	350,000.00
Do Bonds,	912,000.00	
20,000 shares Port Angeles and Peninsular Ry. Co., Stock,	2,000,000.00	35,000.00
40,000 shares Port Angeles and Olympia Ry. Co., Stock,	4,000,000.00	

620 shares Minnesota Transfer Ry. Co., Stock,	62,000.00	62,000.00
100 shares Northern Express Co., Stock,	10,000.00	10,000.00
1,193-2/3 shares Consolidated Land Co., Common Stock,	119,366.67	71,580.00
622 shares Montana Coal & Iron Co., Stock,	62,200.00	13,000.00
City of Ashland, Wis., Bonds,	2,300.00	2,300.00
Tacoma Hotel Co. 2nd Mort. Bonds,	5,000.00	5,000.00
Total,		$3,182,757.91
Accounts Receivable, (Less accounts payable),		$484,805.03
Cash,		842,619.26
Total,		$1,127,424.29

Summary.

	Book Value.
Real Estate, excepting Coal Properties,	$3,591,886.76
Coal Properties,	5,370,104.97
Securities Owned,	3,182,757.91
Accounts receivable, (Less accounts Payable) and Cash,	1,127,424.29
Grand Total,	$13,272,173.93

St. Paul, Minn., May 4, 1909.

Q. I will now show you Exhibit No. 30, Elliott, which purports to be a statement of the dividends paid by the Northwestern Improvement Company since September 1, 1896. That you, understand to be a statement of the dividends paid by that company, as shown by its books?

A. That statement represents the cash disbursements made by the Northwestern Improvement Company since September 1, 1896, as a dividend on its capital stock, except that the so-called extra dividend which was a cash disbursement was not paid direct to the stockholders of the Northwestern Improvement Company; so technically I suppose it might not be called a dividend to the Northwestern Improvement Company stockholders, but a distribution of its assets.

Q. That dividend, the seventeen-million-dollar dividend, the last dividend shown on the sheet, was paid directly to the stockholders of the Northern Pacific Railway Company?

A. Yes, sir.

Q. But, at any rate, that shows the only moneys paid out

or distributed to the owners of the property by the Northwestern Improvement Company?

A. Other than the interest on the bonds which was paid right along.

The statement is as follows:

Dividends Paid by Northwestern Improvement Company Since September 1, 1896.

Year ending June 30, 1901, 5-1/2 per cent. on $2,775,000 capital stock	$ 152,625.00
Year ending June 30, 1904, 10 per cent. on $2,775,000 capital stock	277,500.00
Year ending June 30, 1905, 10 per cent. on $2,775,000 capital stock	277,500.00
Year ending June 30, 1906, 2½ per cent. on $2,775,000 capital stock	69,375.00
	777,000.00
Dec. 3, 1908, extra dividend	17,453,000.00
	$18,230,000.00

St. Paul, Minn., Nov. 23, 1909.

Northern Pacific Ry. Co.

Statement

Office of Comptroller.

Q. Mr. Elliott, when you testified in this case in the spring of this year, you were asked by Mr. Teal questions regarding the increased facilities for the handling of traffic by railway companies during recent years, and among other questions the following was asked of you, and you gave this answer, appearing on page 754 of the testimony taken at St. Paul, April 26 and 27: "In other words, in every element that goes to make up operating, your ability to perform the same serivce today for less money than you could in 1898, is apparent throughout the system, isn't it." and you answered, "Yes, sir." Did you mean by that that there had been a reduction in all of the items of expense connected with the operation of a railroad?

A. No, sir. As I recollect that testimony, that question came after some discussion of the work that had been done on the Northern Pacific in making a more efficient piece of machinery of it, and it is correct that it is a more efficient piece of machinery. I either misunderstood the tenor of the question, or obviously made a mistake in answering yes, that

all items were better than they were before, because it is a well-known fact that labor and material have gone up to a very marked extent in the last ten or twelve years.

Q. Take for example, the item of taxes: how about those? Have those gone up?

A. Taxes on the Northern Pacific in ten years have gone up from something like $650,000 to $2,400,000. The taxes per mile of the railroads in the United States, my recollection is, have been increased from about $225 a mile to $353 per mile—over a fifty per cent. increase in taxes alone.

Q. So that out of every dollar of gross revenue of the company, Mr. Elliott, is the amount that it is now actually necessary to disburse payment of the expenses greater or less than it was ten years ago?

A. It is considerably greater. The economies that our company, in common with others, has been able to introduce through reduction in grades and improvement in equipment and the elimination of physical obstacles have enabled us to move a constantly increasing commerce of the country, but these economies do not seem to have had the effect of overcoming the increase in the unit cost of wages, material and the necessarily increasing demands of the public for service as the country grows older and expects better and better things; and, in the case of the Northern Pacific, it is illustrated in a rough way by the fact that in 1898, which was the first full year after the reorganized company got going, out of all the collections the company made in the shape of earnings it took 50.16 cents for operating expenses and taxes.

Q. Out of every dollar?

A. Out of every dollar. Out of every dollar collected, the year ending June 30, 1909, it took 59.26 cents I think, for the same purpose.

Mr. Teal: What year was that?

The Witness: June 30, 1909. That is, operating expenses and taxes. You will find it on the first page of that report, Mr. Teal; showing that, in spite of all that we have done to reduce our cost and serve the public by giving more transportation, it has taken more of the dollar of collections to provide that service than it did ten years ago.

By Mr. Dillard:

Q. Mr. Elliott, a very careful examination which we made on the Union Pacific, running through several years, and taking the reports of the Department of Commerce and Labor, showing the increased cost of material and labor, and

also an examination of the actual cost of labor and material used by us on our own road, showed that it now costs us a little more to move a ton of freight one mile than it cost us ten years ago; that the economies which have made for the reduction of freight rates have been overbalanced by the increased cost of those things which were necessary for the operation of a railway. Did you not extend your examination far enough, or do you know from your knowledge outside of any examination made by you with regard to this particular case, whether or not that is not true on your line?

A. We have made no detailed figures of the character that you speak of, comparing theoretical cost of moving a ton of freight one mile 1898 with 1908, but looking at it in a broad way, the final result of our operations shows that we are using over 59 cents on the dollar to operate the property and pay taxes on it, where ten years ago we were using a little over 50 cents on the dollar. That necessarily would mean, I should think, that it was costing more to handle the freight.

Q. That recognizes, of course, that there are certain expenses which you can not allocate, and for any one year to show what would be the cost of the movement of a ton of freight would be utterly impossible, but by running it through a large series of years and taking the same arbitrary figures, allocating general expenses to passenger and freight respectively on the question of revenue, we found what I have stated to you. Of course, for any one year that would not do at all, but by keeping the same arbitrary quantity which would be represented by the algebraic character "X", and running it entirely through we arrived at that conclusion.

Mr. Teal: I do not wish to offend Mr. Dillard. With any other witness I would object, but I wish it known that I object to this manner of testifying and examining the witness at the same time, telling what was done in some other case and telling what was not done. I do not think that is any way to examine a witness.

Mr. Dillard: No offense. Just simply a question of opinion.

Cross-Examination.

By Mr. Teal:

Q. Mr. Elliott, don't you think there is some fallacy in this figuring that it is costing more to operate today than it cost formerly, as a net result to the railroads?

A. No, sir.

Q. Don't you think that those figures are being worked a little bit?

A. I cannot speak for other railroads than our own, but I know that ours are not being worked.

Q. In 1897, I notice that your percentage of operating expenses to earnings happened to be that year 76.73 per cent. Do you remember anything about that in 1897?

A. That was the first half year after the receivership, when the property had just got started.

Q. Now, in 1907, the Commission changed its rules as to the method of making up operating expense accounts. That increased apparently the expense account, did it not?

A. No, sir; I think on our road it decreased it, if anything, because their tendency was to try to get everything that was not strictly operating expenses charged either to income or capital account, and our road was charging more or less to operating that under a very strict rule might have been charged to capital or to income.

Q. What would you say is the test, from a money standpoint, as the result of the operations of a railroad as to its being successful or otherwise? would it be the income per train mile?

A. The test, in my judgment, is the same as the test in any other business, whether you have kept them up in suitable condition and paid your debts and had something over for profit.

Q. That is true, of course, but that you have already testified the Northern Pacific has done. What I am getting at is, amongst these units that are used by the railways, what particular unit do you say would be the test which would show the result of operation best?

A. I don't think you can take any one particular unit, because there are so many elements that come in. Now, the net earnings per train mile is a very common unit that is used and a very useful unit, but the net earnings per train mile depends very largely on your average rate. One railroad might make a low net earnings per train mile, and another one a high rate net earnings per train mile, and you would say that the second road is more efficient and more desirable than the first; yet when you came to analyze it you might find that the efficiency was all due to a higher rate. You have got to take a lot of things into consideration.

Q. Do you know of any test that could be applied to a railroad with which you are familiar that, if applied to the North-

ern Pacific Railway Company, other than this qustion of wages and the question of the cost of material, does not indicate increased efficiency of service and increased earning capacity for the last year or two. (I am not speaking of any particular period) over the situation at the time the Northern Pacific Railroad was organized, and if so, state what it is.

A. Well, that is a pretty long question. Can you have it read over?

The question was read.

Mr. Donnelly: Are you trying to determine now, Mr. Teal, as to whether the earnings per train mile are not greater now than they were in 1897 and 1898?

Question read.

A. I don't know of any test, Mr. Teal, that I can apply, especially if you eliminate the two most important items in the problem, in the wages and material. I am bound to admit, as a small owner in the Northern Pacific and as one of its officers, that it is a better piece of machinery than it was ten years ago.

Q. Well, I will ask you, then, this: if your net returns, per mile of road, are not much greater now than they were ten years ago?

A. Yes, sir.

Q. I will ask you if those net returns have not been constantly increasing. When I say constantly, I mean with slight variations, possibly.

A. I should say, in a general way, that there has been a steady increase with the growth of the country.

Q. I will ask you if during that same period your car capacity has not increased?

A. The freight car capacity?

Q. The freight car capacity.

A. Yes, sir.

Q. And if you are not hauling very much larger trainloads of freight than you were then.

A. Yes, sir.

Q. And if the crew that is on a trainload, handling a train, does not handle today more tonnage, the same crew, than it did then?

A. Yes, sir.

Q. And I will ask you if your engine capacity has not largely increased?

A. Yes, sir, it has increased.

Q. And is it true, as it is on the Great Northern, that such

types of engine as the Mallet type, haul very much heavier loads with less coal consumption than the engines that were formerly in use?

A. Less coal consumption what—per day or—

Q. Well, I suppose on ton capacity; I suppose that is the way you use it.

A. Well, I could not say as to that; as to how the engines today compare with ten years ago. We think we have improved on our fuel consumption, but our total fuel cost is a great deal more than it was ten years ago—a great deal more.

Q. The engines in use today have much larger traction power than they had ten years ago?

A. Very much.

Q. And there is one fireman and one engineer on each engine today, as there always was?

A. Yes, sir.

Q. So that, as a matter of fact, a train crew today, notwithstanding you may be paying them more wages, will be handling more tonnage on a train than they did ten years ago, will they not?

A. Sometimes; not all the time.

Q. Generally speaking they will, will they not?

A. No, sir, not all the time. We have a great many branches where the tonnage has not varied at all—very little variation. We have a great many light trains going in one direction with nothing but the way-car and the engine or empty cars and the engine.

Q. Now, these different reports, both of yourself as president and of the gentleman who preceded you in that office, are full of statements of the cutting out of grades, of increased economies in operation or increased resultness of operation, if I can put it that way, of heavier rails, of better roadbed, of heavier trains, of heavier tonnage, for instance, carried over the Cascade mountains, and other items of a like nature. Those statements are all true, are they not, Mr. Elliott?

A. I have tried to make all mine correct. I think they are true—as far as I knew at the time.

Q. As a matter of fact, ten years ago, or shortly after the reorganization, the Northern Pacific Railway Company was not paying dividends, was it?

A. I think it paid a small dividend on the preferred stock, did it not, the first year?

Q. It may have, but I meant paying generally on all of its stock.

A. No, sir, it was not.

Q. Its business, according to this report filed here, its gross receipts has increased in round numbers, from the year 1897 from $15,000,000 to in 1909 $72,600,000; that is correct, isn't it?

A. Well, I assume it is correct. I should say in round figures something like that. I would have to examine the statement to check it up to testify it was absolutely correct.

Q. And you have, of late years, been paying dividends steadily, have you not?

A. Yes, sir.

Q. Now, as a matter of fact, from the railroad standpoint, the investor's standpoint, the operating standpoint, would you want the inference drawn from your testimony that the condition as it existed ten years ago or twelve years ago on the Northern Pacific was better than it is today?

A. No, sir.

Q. In other words, is it not a fact that this question of cost in operation may or may not be a very important one—it always is important, but I mean be very important, conditioned upon the volume of the business?

A. Is that a question?

Q. Yes.

A. Well, can you read that question. I didn't quite catch it all.

Question read.

A. The item of cost in railroad administration is just exactly of the same importance as is the item of cost in any other concern, such as a flour mill or a paper mill; you have got to take it into account all the time.

Q. That is true, but there is a large number of overhead or fixed charges which apply, whether you do much or little business, is there not?

A. Quite a number.

Q. So that these factors that we are speaking of that have increased in cost during this latter period by no means cover all of the cost of operation of a railroad, do they, including fixed charges?

A. Labor and material and taxes are all fixed charges and cover substantially all of the expenses.

Q. Have your fixed charges increased?

A. Our fixed charges have not increased very materially

except in taxes; they have gone up about four times, I think. The fixed charges have increased somewhat as we have issued bonds to make additions to the property. That could easily be checked up from the books.

Q. To what extent does the average loading of a car enter into the profit of a haul?

A. How is that, please?

Q. To what extent does the average loading of a car enter into the profitableness of the operation?

A. Why, it is obvious, if you could load every car to its full capacity in each direction, you would be using your freight car unit to a better extent and making some money out of it. As it is today, our freight car units are only being used about three hours a day. That is the best we can do.

Q. I notice from the report of 1897 that your average ton per loaded car of commercial freight was 10.19; in 1908 it was 18.86. I will see what it is here in 1909 (referring to Northern Pacific annual report.) Do you know what it was in 1909, Mr. Elliott? Do you remember?

(Witness refers to statement in hands of Mr. Teal.)

Q. It was 18.20 for this year, 18.86 for last year. Would not that increase, in itself overcome, to a very large extent or to a considerable extent, increase in wages?

A. It did not.

Q. It did not. Now, then, take the average trainload: to what extent does that enter into the profitableness of operation?

A. The increase in the trainload is a very important thing to the whole country, not only to the railroad. For example, the Northern Pacific, if it had not increased its trainload in the last five or six years, could not have given the service to the public that it has, and that service, even at times has been insufficient for the needs of the country; and, therefore, the increase in the trainload is aimed at all the time, so that we can serve the public by moving their commodities. To a certain extent the increase in the trainload also helps us to reduce the cost of an individual train.

Q. I note that in 1897 your average trainload was 187 tons; while in 1909 it was 434.59 tons. That would indicate very much better operation than in 1897, wouldn't it, Mr. Elliott?

A. Yes, sir; if we hadn't done it, why, there would not have been half the growth of the western coutnry, that there

has been through the investment we have made in order to bring about that very result.

Q. I notice that the freight earnings per train mile in 1897 was $2.14; in 1898 $3.88. Let me see if I can find it here (referring to Northern Pacific report.) Now, then, those figures absolutely show an increased earning on each train mile, do they not, Mr. Elliott?

A. Yes, sir.

Q. Do not these various items that I have read there indicate that, as a matter of fact, the Northern Pacific, as an operating proposition, is a very much more profitable railway than it was in 1897?

A. Why, certainly. Nobody would deny that.

Mr. Donnelly: He has said several times it was.

Q. Mr. Elliott, do you remember what the stock of the Northern Pacific Railway Company was selling for in 1896 and 1897?

A. No, sir.

Q. You don't know whether the common was selling at 4-1/4 then or not?

A. I do not.

Q. Do you know how much Mr. Hill and Mr. Kennedy paid for the stock that they purchased of the Northern Pacific Railway Company (I imagine through that committee) in about 1897 and 1898?

A. I do not.

Q. You don't know whether it was $15 or $16?

A. Never have heard. Never have heard anybody mention it.

Mr. Donnelly: Not knowing what it was, of course, he couldn't know these things, and you are simply suggesting them, Mr. Teal. If you have proof of it, of course—

Mr. Teal: There is proof right in the supreme court of the United States.

Mr. Donnelly: Then introduce it. Now, we object to the leading of the witness and the suggestions of these things.

Mr. Teal: All right.

Q. Now, taking the two months of July and August of 1909, can you say how much the net business of the Northern Pacific has increased over the same two months for 1908?

A. I could not say exactly. It has increased quite a lot.

Q. Without putting it exactly, after making allowances

for taxes and operation expenses, etc., was the net increase in the neighborhood of a million dollars?

A. I should think very likely.

Q. I would like to know whether or not at this time the Northern Pacific is not doing as much business or perhaps more than it ever did in its history for the same months.

A. No, we are just about the same as for some of our heavy Novembers.

Q. You are about at the maximum you ever reached?

A. In a November, yes, just about.

Q. I would like to have you state whether or not the operations of the Northern Pacific are today not profitable.

A. Well, it depends on what your definition of profitable is. I have friends who are in manufacturing enterprises who make sixty and eighty per cent. a year right along, and they think that is fairly good. I have one friend who is in a business that makes a hundred per cent. a year. We are paying seven, and I do not consider that a very profitable enterprise. No one in the states through which we run are willing to put their money into the business. We have scarcely a stockholder west of Minnesota. They can use their money to much better advantage in Montana, Washington and Oregon, than to put in into seven per cent. railroads.

Q. Do you wish to be understood, Mr. Elliott, that seven per cent. is all you are earning?

A. All we are paying to our owners. We are putting the balance of it right into the property.

Q. Haven't you today a surplus of many millions of dollars?

A. Yes, sir.

Q. And if you put the balance of it into the property, is there any difference between that than if I took my profits and put it into some property?

A. There is this difference: that you can put it into fixed property you are risking whether you can earn anything more on it.

Q. Now, Mr. Elliott, you stated what people were earning in certain business in the West and other places—I don't know where it was, and I presume you are qualified to speak of what people make out there in a general way; have you any idea (and I think it has as much to do with the case as your statement), have you any idea what, in the state of Oregon or Washington an estate composed of general proper-

ties of various kinds, sufficiently large to be worth a million or two million dollars, pays to its owners?

A. No, sir; I have merely based my judgment of the situation on this: that I have talked to a great many friends in the West on the idea that it would help the railroad situation if we had some local owners, and every one I have talked to said "Why, Pshaw, we wouldn't put our money into the railroad. We can make more to begin with, with the same amount of money in other pursuits in these states, and besides, we think your investment is a pretty risky one."

Q. Now, then, a pretty fair idea as to what people think of an investment is what a thing can be sold for on the market. Since you are speaking of it in this way, what is Northern Pacific stock worth today?

A. I don't know.

Q. You don't know what it has been worth in the last week?

A. Yes.

Q. How much?

A. About 144, I think. What it is selling for today I don't know.

Q. Then people somewhere are willing to pay a premium for getting that stock?

A. Yes, sir.

Q. Now, to come back to the question that I asked you before, or to change it a little bit, is the operation of the Northern Pacific at the present time as profitable or more profitable than it has ever been?

A. I should not say it was more profitable than it has ever been.

Q. It is just as profitable, is it not, Mr. Elliott?

A. Well, the last three months have been good months, but there are certain conditions now at work that are affecting our business; we don't know to what extent.

Q. For instance, or do you care to speak of it?

A. The great growth of competition. We have got the Milwaukee and St. Paul, it parallels us practically all the way from the Missouri river to the Pacific Coast. They have only just begun to operate, and they are already taking quite large volumes of business from us any place where they are beginning to do business. The Union Pacific is going in at Puget Sound, which will affect our business.

Q. Would you consider that the building of additional railroads and the taking of business, we will say from the

Northern Pacific, would justify you in the maintenance of high rates in order to earn a particular income?

A. I never made that statement.

Q. I say would you?

A. I think the rates through the country as a whole ought to be high enough to maintain the properties in good order and pay a good return to the owners.

Q. That would be regardless of the volume of freight?

A. Yes.

Q. Then the result of that would be that the more railroads the higher the rates, would it not?

A. It might be.

Q. And in your last examination here you stated, if I remember correctly, that you didn't believe in any control of rates excepting that of competition?

A. That is all.

Q. So that the result of your conclusion would be that rates would have to be advanced in order to pay returns on this capital that was put in the new roads, as well as to maintain the capital on the old roads with which they are competing?

A. That is a perfectly possible condition to arise.

Q. Then it would be better, would it not, Mr. Elliott, that new roads be not built?

A. In certain cases it would. That is the reason why, in certain cases, railroads join hands and run trackage one to the other, so as to save an added burden on the public.

Q. Then, Mr. Elliott, if it is only through competition that rates can be fixed, and your idea would be to eliminate competition, then it would just simply leave it to the surviving railroad to fix the rates?

A. I beg pardon, I didn't say anything about eliminating competition. I merely said that one of the things that would affect our earnings was this competition.

Q. In connection with your report of 1907, I would like to have just what this means under the head of "Depreciation of Equipment." "The Equipment Account of the company represents the fair value of all equipment belonging to the company on June 30, 1907, after making full allowance for depreciation in accordance with the principle laid down by the Interstate Commerce Commission; the charge of $5,296,753 is arrived at by computing the depreciation to June 30, 1907, of all equipment owned by the company on September 1, 1896, and purchased and built since then." Does that statement mean that after making that depreciation, that then

your equipment account represented the full value of the equipment carried?

A. We tried to make it that way as nearly as we could figure.

Q. In connection with the Northwestern Improvement Company's properties, a large number of a considerable number of these lands, as I understand it, were lands that were acquired by the company (by the present company) at the time of reorganization; is that correct?

A. By the present railway company?

Q. Yes, sir.

A. Yes, sir, quite a number of them.

Q. And those lands were, amongst the things that represented the capital stock and bonds of the railroad company that were issued at that time?

A. Yes, sir, that is as I understand.

Q. In arriving at the value of the coal lands that the company owns and that were transferred to this Northwestern Improvement Company, how were those figures arrived at, Mr. Elliott?

A. Well, the coal lands, as I recollect it, Mr. Teal, did not come, except in a very few instances, through the land grant of the company. Some of them did, and others were purchased afterwards. How the values were arrived at by those that were transferred from the railway company to the Improvement Company I don't know; it was before I came with the company.

Q. Now, I understood, and if I am mistaken Mr. Donnelly will correct me—I understood from Mr. Cooper that it was their intention to transfer to this company all of the coal lands on which coal was discovered or on which it was suspicioned or believed to exist; is not that about his language?

Mr. Donnelly: I think that is substantially it.

Q. Is that your understanding?

A. No, sir. Mr. Cooper probably didn't understand your question. We have many million acres of land that have lignite coal under it. We do not attempt at all to transfer that coal land to the Northwestern Improvement Company. It is only coal lands that are thought to have bituminous coal under them or very high grade lignite that might be mined at a possible profit, but all over Eastern Montana and parts of Western North Dakota there are many hundred thousands of acres of land with lignite under it which is still in the land grant of the company.

Q. Now, in the Spokane case there were some coal proper-

ties put in there as part of the valuation of the Northern Pacific Railroad Company at $50,000,000. Are those the lands that belong to this company?

A. Yes, sir.

By Mr. Walter:

Q. I understand you to say that for each dollar received you have to pay during the year 1909 about 59 cents and one-tenth.

A. Our annual report shows it; I think it was 59.26, operating expenses and taxes.

Q. So that you have left out of the dollar about 40 cents and a fraction?

A. Yes, sir, about.

Q. During the year 1909, your net earnings bore a much larger percentage to gross receipts than it did to the year 1908, did it not?

Mr. Donnelly: I don't see how that could possibly be.

A. I haven't examined the books. I don't attempt to carry all those figures in my mind.

Q. Your gross receipts were less during 1909 than 1908?

A. I think they were.

Q. And your net earnings were practically two million dollars more?

A. Yes; we made quite a sweeping cut in some of our expenses through apprehension of the future.

Q. So that you were able to save two million dollars more out of the less amount that you took in?

A. If that is the amount, we did it that year, but we postponed certain expenses that we are now going at very vigorously. We are laying 400 miles of rail this coming year.

Q. That is to take care of business that must be accommodated?

A. Well, it is laying existing tracks. We held up, as many railroads did, some of our expenditures during the time of apprehension.

Q. During the year 1908 you were able to save more cents out of each dollar taken in than you have in 1907, and in 1907 more than in 1906?

A. I am quite proud of the fact.

Q. Yes, and I think justly so.

Mr. Dillard: Nothing to be ashamed of.

Mr. Walter: That is right.

By Mr. Donnelly:

Q. Do I understand that the percentage of operating expenses to gross receipts was less in 1908 than in 1907?

A. Well, I think it was, but I am not certain.

Mr. Teal: The net was less for 1908 than 1907.

Mr. Walter: I was speaking as compared with each preceding year.

Mr. Teal: That is what I am speaking of. You are simply mistaken. I will read off the figures if you want them. The operating expenses in 1907 were 54.94; 1908, 58.42, 1909, 55.53.

The Witness: That is, without taxes in each case.

Mr. Teal: Yes, sir, but I am using the same ratio all the time.

By Mr. Walter:

Q. As I understand it, during the year 1909 you were enabled to save out of each dollar that you took in 43.7 cents?

A. No, sir.

Q. 40 cents?

A. Oh, yes.

Q. While your gross receipts were less, your net receipts were greater, during that year?

Mr. Donnelly: During 1908, how many cents were saved out of each dollar that was taken in?

Mr. Walter: That wasn't the query I was putting to him.

Mr. Donnelly: That is the only correct way to get at it, of course. The actual fact is, is it not, Mr. Elliott, that there has been a gradual increase in the percentage which operating expenses bear to gross revenue, if you cut out the year 1909 when these economies had been put in.

The Witness: Yes.

Mr. Donnelly: Or when the reduction of the operating expenses had been put in.

The Witness: I think that is a fair statement. You can easily check it by taking the accounts right from the beginning. The demands of the public are such that a railroad like ours that is trying to respond to them is constantly spending a little more money. We have a little better passenger train service and a little better station, and so on.

Mr. Donnelly: And if you assume, that the relation of the expense of hauling passengers to the expense of hauling freight is the same now as it was in 1896 and 1897, it must follow, must it not, that it actually costs more at the present time to move a ton of freight a mile than it cost in 1897 and 1898?

A. It is my judgment that it does, but I have never been able to make any actual figures that would prove it. I just take it on the broad lines that we have less money left out of all we take in.

By Mr. Teal:

Q. Mr. Elliott, just pardon me one question. Using the basis that Mr. Donnelly did, does it cost more to haul one ton of freight by your road now than it did in 1907? That simply can't be true, can it?

Mr. Dillard: It absolutely can be true.

Q. Very well, we will let the figures go in. I would like to have Mr. Elliott answer that question.

A. I don't see why it can not be true, if I follow your line of thought.

Q. My line of thought is this: that you start out with a heavier carloading; you start out with a heavier trainload, and you start out with greater economy of operation. Now then, if it is costing you more per ton, I am speaking now per ton to move it than it did in 1907, then why should not that result show in your net earnings?

Mr. Holden: Do you mean 1907 or 1897?

Mr. Teal: 1897 and 1909.

A. It does show in our operations, just the gross figure that I gave you, that we could save fifty cents on the dollar in 1897 and forty cents on the dollar in 1909.

By Mr. Wimbish:

Q. Mr. Elliott, I am sincerely desirous of ascertaining, if I can, what factors actually obtain in the making of particular rates, and without desiring to put the question in an offensive form, I want to ask you if practically, in the making of freight rates, of particular rates, they are not made as high as the traffic will bear and move and competitive conditions will admit?

A. Is that the question?

Q. Yes, sir, I ask you that question.

A. In my judgment, railroad freight rates are made exactly the same way as all other prices are made. We take into account a thousand and one items and forces that have to do with the making of a price. It is the old question of a buyer and seller. The seller wants to sell all he can and have something left over to keep up his plant and make some money. The buyer wants to get it, of course, as cheap as he can. The seller in the case of the railroad is the railroad company, and the buyer are thousands and millions of people all over the United States. The railroad endeavors to make its prices, if

it can, so as to expand its business, so as to get a return for its own work and so that the buyer of its transportation will prosper.

Q. I understand, Mr. Elliott. I am not going into any refined theory. I want to get the practical basis, if I can, upon which rates are made, and as I understand you, you make the price as high as the customer can afford to and will pay?

A. No, sir, we do not.

Q. What else do you take into consideration?

A. We take into consideration the welfare of the customer, the very proper desire that the railroad wants to help its country develop in every possible way. If we adopted the principle you speak of—we have a community we will say, at Whitehall, Montana, there is no other railroad there; we could charge five times the rate that we get now on stuff going in there, if we wanted to. We don't do it. We don't charge, in the offensive sense, what the traffic will bear at all. We do charge just as every other sensible business man does. We do arrive at the charge the same as every other sensible business man does—by what Adam Smith calls "haggling" in the market. You go to work and say there is this force, there is that force, and that force over there, and all these forces come together and a price is arrived at.

Q. Then you consider transportation as a commodity to be sold at a fair market price?

A. I think so. It is something that has got to be sold. If you don't sell it you don't do business.

Q. Now, in making a rate, of course, you must regard competition?

A. Certainly; that is one of the forces that we take into account.

Q. You can't make it higher than the traffic will bear and move, so that you must come within these limitations, is that right?

A. Why, certainly.

Q. In making a particular rate, does the traffic mn consider the cost and value of the particular service?

A. He takes that into consideration as two of the important items to consider.

Q. How does he arrive at the cost and value of a particular service?

A. He can't get at it exactly; he takes just such figures as we are talking about today, and knows in a general way it takes sixty cents on the dollar to do the business of the company.

Q. You can ascertain from the ratio of your operating expenses to your income—your gross income from operation—what the average cost of your business is?

A. We publish it.

Q. I say you can ascertain that?

A. We can; anybody can.

Q. You cannot go farther than that, you cannot ascertain the cost of a particular service?

A. I don't think you can get at the actual cost of any one kind of service.

Q. How do you estimate the value of the service to the customer?

A. Just the way I am telling you; that you take into account the delivered prices and everything that you can find that has to deal with the question. Those transactions, millions of them, are going on every day all over the country.

Q. In making a rate does the traffic man sit down and figure out what he thinks is the cost of that service and what he thinks is the value to the customer? Does he make a rate on that basis?

A. Not exactly in dollars and cents. He figures out in his mind all the items he can get at. If he has empty cars, for example, going from St. Paul to Duluth, a constant flow of empty cars, why, he says I can take flour from Minneapolis to Duluth and help expand the Minneapolis flour market and make a price there that is very much less than I could afford to make on flour moving from, we will say, Spokane to Lewiston.

Q. Now let us get down to the rate in this particular case, Mr. Elliott. We will say the rate from coast points ever your line to Minnesota Transfer is 45 cents a hundred pounds.

A. Yes, sir.

Q. In making that rate are you controlled by the fact that the Great Northern and other competitive lines have in a 45-cent rate and by the further fact that a greater rate would be more than that traffic would bear and move over your line, and do you in making that rate consider anything else except those two facts?

A. Why, we try to consider the competition of markets in the east and south; we try to consider the fact that we want our lumber territory to develop. Of course, we must consider what the other road makes, because if we made a higher rate than was in effect from a lumber camp ten miles off from another road, it is obvious our lumbermen would soon be cut out of business.

Q. I mean when you said that you made the rate as high as competitive conditions would admit of that you would take into consideration not only the carrier competition, the parallel line, we might say, or competing lines, but also market competition.

A. Why, of course.

Q. It is perfectly obvious you cannot charge on the commodity a rate so great as to prevent that commodity moving to the market, I have allowed that. But in making this particular rate you find that these competitive conditions will not admit of more than 45 cents per hundred pounds?

A. We thought that they would. We did not find that the Interstate Commorce Commission found it.

Q. You may take fifty cents, I don't care what the rate may be, or any rate you may make; you make it because you think competitive conditions will admit of that and no more?

A. Well,—

Q. Do you ever go into the value of the service to the customer?

A. Sometimes.

Q. And scale that down?

A. We did in the lumber rate case. We felt that the empty haul west was a very vital feature, and when we added it all up togther, it was very dubious whether there was any great return from the lumber hauled itself. There was obviously a return in the development of the counrty.

Q. But at last you made the rate because you thought the traffic would bear it and competitive conditions would admit of it?

A. Those are some of the elements, of course, I still think so, too.

Q. I really want to get from you a fair expression of your opinion as to how those rates are made.

A. Well, I am trying to give it to you.

Q. I know you are.

A. You sit down and you figure a thousand forces that makes these rates, just the same as you make prices with anything else.

Q. Now, at the expense of repetition, won't you then repeat some of these considerations that enter into the making of this lumber rate?

A. Well, there is the competition of markets. There is the question of your empty haul which varies from time to time. There is the volume of the traffic, whether the business is desirable at all; there is the competition of other railroads; there

is the natural desire on the part of any railroad to develop its territory in every way that it can, by not only having the lumbermen propsper, but also having the consumer of lumber prosper, getting all his materials at reasonable prices.

Q. Now, you don't take into consideration the capital stock of your company or the cost and value of your property over its reproduction in making a particular rate, do you?

A. Why, I should hardly say we did in any particular rate. Of course, you have got to consider all the time that your railroad is a going concern, just as anything else is, and if you don't in some way get sufficient money to pay your expenses, taxes and interest, why then you will go into the hands of the sheriff.

Q. You try to make the revenue from the whole body of your rates pay a fair return upon the value of your investment?

A. Yes, sir.

Q. But you do not consider that in making a particular rate?

A. Why, I suppose insensibly you consider it all the time, just as the packing-house man when he sells a can of lard he figures it insensibly. He has got to figure his lard price so as to have it carry a share of the business.

Mr. Dillard: There is a subconscious apprehension of the entire question all the time, isn't there, Mr. Elliott?

The Witness: Why, yes. The packing-house illustration always seemed to me a very good one. Here is an enormous packing house that makes all sorts of things. You can't say exactly what it costs to make one sausage. You can make all sorts of estimates, and Mr. Armour, when he sells one sausage, he doesn't figure out that it is going to carry so much interest and so much taxes and so much traveling expenses, but through the experience in the business the packers have found out how to make their prices, and still have something left over. There are all sorts of forces which enter into the price of the result of the packing-house produce operation; all sorts of forces enter into the result of the price of a railroad freight rate.

Q. Now, when you made this advance to fifty cents a hundred pounds on lumber from coast points to St. Paul, could you have made that any differently if you had thought your property was worth $400,000,000 instead of as you think it is worth exceeding $600,000,000?

A. I don't know what I would have done if I had thought of it. I don't see how I can answer.

Q. Suppose your property was worth, instead of six hundred million, a billion, could you have made the rate higher?

A. How much?

Q. Say a billion, or any amount you choose; could you have made the rate higher, if the Great Northern and the Union Pacific had a fifty-cent rate in?

A. Why, we wouldn't have made it any higher. We want the business to grow with our railroad. We would either have gone out of the business, or we would have made the same rates that other people made.

Q. Regardless of your material?

A. But we might find in time that we could cease to add to our property, cease to add facilities to the conduct of an unremunerative business.

Q. Do you think the order of the Commission establishing the rates in this case is unreasonable?

A. I do.

Q. Wherein do you think it is unreasonable?

A. I think the fifty-cent rate that we are trying to establish was a very reasonable rate.

Q. Why do you think the forty--five-cent rate is unreasonable? Now give me the specific reason why you believe it is unreasonable.

A. Well, it is a rate of nine dollars a ton for about two thousand mile haul, or four mills a ton a mile, and I believe that is an unreasonably low rate for a road like the Northern Pacific.

Q. Any other reason?

A. Well, you asked me to give a reason; that is the chief one.

Q. I would like to know all that you have, Mr. Elliott, why you think that the forty-five-cent rate prescribed by the Commission is unreasonable.

A. Well, I think that is the best reason I can give. For a railroad like ours it is no incentive to us to occupy our tracks and engines indefinitely on such low-rate business, with the advancing prices of everything we have to buy. I believe statistics show that one hundred dollars' worth of freight today buys about sixteen to twenty per cent less commodity than it did ten years ago.

Q. Is there any other reason that you think of?

A. Well, the natural desire on the part of the railroad to make money, of course, that exists with everybody.

Q. Do you think that the order of the Commission is unreasonable because it will confiscate your property?

A. I don't believe the order would necessarily actually confiscate our property. I believe that it is putting a great burden on other things that we may do. In other words, that the lumberman is getting his service unreasonably low.

Q. As compared now with what traffic?

A. Well, with our general run of business. I don't believe that half a cent a ton mile, or four and one-half mills a ton a mile is far below the average rates that our company get, and we are less than any of the roads in other parts of the country west of the Mississippi river.

Q. Then, as I understand you, you think the order is unreasonable because your rate per ton mile is less than you think it should be?

A. That is one of the reasons.

Q. And you think it is unreasonably low as compared with the rate per ton-mile on other traffic?

A. Those are the two reasons.

Q. Are there any others?

A. Well, I gave the natural desire on the part of the railroad to get a little more money for its welfare.

Q. Well, we will add that, the desire on the part of the railroad to earn more revenue. That is all, sir.

Mr. Donnelly: At this time, if your Honor please, the complainants offer in evidence the record of all testimony given before the Interstate Commerce Commission on the hearings in these lumber cases, as the result of which the orders now under attack were made. That order is made for the purpose of substantiating the averment in the complaint to the effect that there was no evidence before the Commission to justify the order actually made.

The Master: That is the entire evidence given by both sides?

Mr. Donnelly: Yes, the entire evidence submitted to the Interstate Commerce Commission at that time, and it will be understood that though the record is not actually present here in the court room at this time, it is all offered in evidence at this time with leave to the Interstate Commerce Commission, the defendant in the case, to withdraw the original record, and that portion of the record which counsel will agree upon will be actually printed in connection with the case. Your Honor will understand that there are various documents in the complete record which while they will be considered in evidence and will actually be in evidence under the offer now made, it will not be considered necessary by either side that they be actually printed, but it will be before the court, and

reference may be made to them by either party and they will all be in evidence in the case under this offer.

The Master: How do you expect the court to consider any of them if he does not know anything about them?

Mr. Donnelly: The entire record, your Honor will understand, is before the court. And included in that record is a large number of documents that were introduced from time to time during the course of the hearing, which, while they are an integral part of the record as it actually exists in the Commission's files, yet counsel on both sides (counsel for the Commission as well as ourselves) and they, of course, can be trusted to see to it that anything having any direct bearing upon the issues here will actually get before the court—they as well as ourselves, I say, will agree that they need not be actually printed and incorporated in the printed record that shall be before the court. So that, for the purposes of its consideration, as to whether there was before the Interstate Commerce Commission evidence justifying the evidence actually made, it need consider only the actual printed record that is in front of it, and anything else that the counsel may think it proper to call attention to and incorporate in their briefs or arguments.

The Master: Well, that means practically that you are going to stipulate what that record was?

Mr. Donnelly: Yes.

Mr. Wimbish: It means we are going to stipulate certain things out of the printed record.

The Master: That are not necessary?

Mr. Wimbish: Yes, but would leave it to counsel on either side to refer to anything before the Commission, whether printed or not.

Mr. Walter: In other words, the original will not be presented to the Master or the Court, but a copy of it.

Mr. Donnelly: In other words, the Court will know judicially anything that is in that record not actually printed on its being brought directly to the court's attention.

The Master: I see; in the argument?

Mr. Donnelly: Yes, in the argument.

Mr. Donnelly: It is further understood that no objection is made to the form of that offer or to the authentication of the record, and whatever legal objection you may have as to it may be made further on, but no objection is made to it because of the documents not being actually present in the court room or not being formally authenticated. And it is further understood that the records are introduced in evidence for the

specific purpose that I have already indicated, to wit, in support of the averment of paragraph 15 of the bill, that there was no evidence before the commission to justify the making of the order complained of, shall also be available to the complainants in support of any other averment in their complaint; that all of that evidence shall be considered as actually in, but that so much of the evidence thus tendered as was actually given on behalf of the lumber men before the association shall not be considered as original evidence offered by the complainants herein in support of their contention, but shall be considered as evidence in the case to the same extent and effect as if introduced by the defendant herein.

Mr. Walter: All the foregoing subject to the original objections made at the beginning of these hearings by the defendants as to the admissibility of any evidence on this hearing.

Mr. Holden: It is stipulated and agreed that the principal operating offices of the Northern Pacific Railway Company and the Great Northern Railway Company are in the city of St. Paul, in the District of Minnesota, 3rd division thereof.

Mr. Teal: In connection with the testimony taken before the Commission, so that there will be no misunderstanding, it is stipulated and agreed that in the trial before the Commission, the Commission and the parties to the cause there had the right to refer to and use any tariffs that were on file with the Commission and that they could also use and refer to any and all annual reports of the carriers on file with the commission as well as reports to stockholders, and it is understood that such references may be made in the briefs of either of the parties hereto.

The Complainants then rested.

Mr. Walter: On behalf of the defendant, not waving in the least any of our objections to the admissibility or sufficiency of the testimony offered on behalf of the complainants, we shall offer certain testimony. That testimony will be directed largely toward the issue made by the introduction of testimony as to the cost of reproduction of the Northern Pacific and Great Northern properties. After the testimony had been offered at our last hearing, the Commission employed Mr. Morgan, who was then with the Minnesota Commission, to make certain investigations to check the testimony as to the cost of reproduction. As many of its employees in the accounting department as could be used in these two offices were sent here under Mr. Morgan's direction. Owing to the fact that the order of the Commission expires within two

years from the time of its effective date, which was October 15, 1908, it was manifestly impossible to investigate and check the entire reproductive statement. We therefore selected certain items and made an investigation, checking it in the best manner we could, and as to those particular items testimony will be offered, but we do not in any wise concede that the remaining items are correct as stated or as furnished in testimony by the complainants. We simply offer this testimony as throwing light on certain particular items and that perhaps that light should be reflected in other items. We may further offer certain tables as to the operating cost on certain lines of railroad, on certain kinds of traffic, but it will be documentary, and our oral testimony will be short. With that statement we will put on the stand, as our first witness, Mr. Morgan. It is now getting along after four o'clock, and we will simply take a short statement from him as to his experience and qualifications as an expert, and not go into the actual figures this evening.

Mr. Teal: It is stipulated that any of the parties to this cause may in their brief and argument refer to the market value of the stocks and bonds of any of the complainant companies as shown by any standard financial publication.

DWIGHT C. MORGAN being duly sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. Walter.

Q. What is your full name, Mr. Morgan?
A. Dwight C. Morgan.
Q. What is your business?
A. Civil engineer.
Q. Where do you reside?
A. At the present time I am residing in Kittanning, Pennsylvania.
Q. What is your present employment at Kittanning?
A. I am Vice-president and General Manager of the Pittsburg and Shawmut Railroad.
Q. How long have you been so engaged?
A. Since about the middle of August.
Q. Is that line in operation or in process of construction?
A. It is in process of construction.
Q. Please state to the Master your experience in railroad matters.

A. My education, first, was in the public schools of Bloomington, Illinois, and at Dwight, Illinois, and I afterwards completed my education in the theory of civil engineering at the University of Michigan. My experience in engineering works began in 1887, on the construction of the Ohio River Bridge of the Illinois Central Railway Company at Cairo, Illinois, where I was employed as a rodman and inspector of cement. In 1889 and 1890 I was employed in a similar capacity on the Merchants Bridge, constructed across the Mississippi River at St. Louis. In 1891 I was employed by the Northern Pacific as rodman on the work between Garretson and Helena, and later as draughtsman and instrument man on the line over St. Regis Pass, which was under the immediate charge of Mr. W. L. Darling, who was then assistant engineer and is now the chief engineer of the Northern Pacific System. In 1892 I was employed as assistant engineer of the Southern Pacific, with headquarters at Oakland, California, having duties to perform in connection with maintenance of way, including bridges and buildings. I resigned from this service to assist my father, Richard P. Morgan, in a comprehensive investigation of the railways of California for the railroad commission of that state, reporting to them on what would be just and equitable rates of freights and fares for the railroads of that state. This enquiry involved an examination of all the railways in the state and of the cost conditions entering into their construction, maintenance, and operation. In 1893 I returned to Illinois and was appointed engineer of the Illinois Railroad Commission, with headquarters at Springfield, Illinois. My duties in that capacity required examinations and reports upon the character of the construction and equipment of the railways of Illinois and of the standards of maintenance observed, also supervision over interlocking and signalling apparatus and investigations and reports upon railroad accidents when loss of life resulted. I served in this capacity until 1897, when I was appointed assistant to the chief engineer of the Illinois Central Railroad with headquarters in Chicago. I had charge of the revisions of line and grade in Illinois and Kentucky, and in the winter of 1898 made the surveys and location for a line in the Yazoo Delta in Mississippi. Upon completing the locations, I resigned to enter the service of the Chicago & Alton Railroad, with which latter company I remained until 1901, engaged on special work for the President on signalling and grade and line revisions. I took charge of and managed the Quincy-Carrolton & Western Railroad from the time of its acquisi-

tion by the Chicago & Alton until about the time of its absorption, when I was transferred as engineer of maintenance of way of the Western Division, with headquarters at Kansas City. I had charge of the reconstruction of that division to conform to modern operating conditions. That work involved extensive line and grade changes, new bridges, new buildings, in fact the line was regenerated under my direction. Upon the completion of that work I was appointed assistant engineer of the Chicago, Great Western, with headquarters at St. Paul. I had charge of surveys for new lines and was resident engineer on revisions of old lines. I left the service of the Great Western in 1902 to accept service with the Chicago, St. Paul, Minneapolis & Omaha Railway as assistant engineer in charge of the construction of the new machine shops and terminals at Sioux City, Iowa, where I remained until the work was completed. I was then assigned engineering duties in St. Paul, and when the Wisconsin Railroad Appraisal was undertaken, I was given charge of and carried to completion the cost of reproduction and present value of its properties in that state. I continued in the engineering department until 1904, when I was appointed assistant to the general superintendent of that company, having to do with the details of the operation and maintenance of the system; remaining in that capacity until January 15, 1906, when I was appointed engineer of the Minnesota Railroad & Warehouse Commission, in charge of the valuation of the railways of Minnesota and devoted myself exclusively to that work up to the time I resigned, in the middle of August, upon the completion of the work.

During the period from 1887 to 1906, at intervals, when not actively in the employ of railway companies I assisted my father, Richard P. Morgan, in examinations and reports for underlying interests upon the character and condition of the construction and equipment of railway properties and of their value and earning capacity. This work comprised, among other, the valuation for the United States Government of all of the bond-aided lines of the Union & Central Pacific Railroads and for private parties examinations and reports upon many of the important systems of railway west of the Mississippi River between Canada and Mexico.

Q. When did you first commence the enquiry for the Commission, that is active enquiry in this case?

A. It was about the 23rd or 24th of June.

Q. How large a force worked under your direction in the examination?

A. The forces varied that I had under my direction. When we first started I think we had but two men who were sent here, and then the force was increased. I think the maximum number of men that I had employed here, working under my direction in this work, was twelve, and that varied from time to time. As the work was finished, the men were assigned by the chief accountant to other work, elsewhere.

Q. What records did you investigate?

A. We investigated into the cost of grading, into the cost of ballasting, into the cost of track laying and surfacing, into the cost of ties, besides looking up unit prices paid for various class of material.

Q. Did you go to the construction books of the two companies as far as they were available on certain items?

A. Yes. The construction books of both the Northern Pacific and the Great Northern were made use of; I had access to them, and the railway companies furnished data to us very willingly, as far as they had it, and assisted us in a great many ways in getting the data together.

Q. Did you go back of the construction books to the vouchers, to the detailed information?

A. Yes; we verified the amounts shown in the construction books from the vouchers, as far as it was possible to do so. Of course that was a very laborious task; it involved the handling of a great many vouchers, and there was a great deal of detail about it.

Q. Would you say thousands of vouchers?

A. Yes, thousands of vouchers.

Q. While you were engineering for the railroad commission of Minnesota, state the duties you there performed and the work that you did for the Minnesota Commission.

A. I made detailed examination of all of the railroads in the State upon which to predicate an estimate for reproducing them. That work occupied about three years time. I had employed under me, I think, a maximum of something like 27 or 28 men, and that force varied from time to time according to the circumstances of the work; and I made a personal inspection of all of the lines in the state, went over them and examined them with a corps of engineers and checked the inventories which the railroad companies themselves had submitted, covering all of the physical characteristic of the lines.

Q. Can you state whether you made an actual physical inspection of all the railroad properties in the State?

A. Yes, I did; practically all of them. There were per-

haps some few minor branches that were not covered, but practically all of the mileage in the State was examined.

Q. What can you say as to whether you went over the Minnesota properties of the Great Northern and Northern Pacific Railway Companies?

A. Yes, I did.

Q. Made the valuation of these properties based on the theory of the cost of reproduction so far as they lay within the State of Minnesota?

A. Yes, sir.

And adjournment was here taken until the morning of Wednesday, November 24, 1909, at 10 o'clock.

Room 326 Federal Building,
St. Paul, Minn., November 24, 1909, 10 a. m.

The hearing was resumed before the Special Master, Hon. Frederick N. Dickson, at the above time and place.

Present:

On behalf of the Complainants, Mr. Hale Holden, Mr. Charles Donnelly, Mr. F. C. Dillard.

On behalf of the Defendant, Mr. Luther M. Walter, Mr. W. A. Wimbish, Mr. J. N. Teal.

DWIGHT C. MORGAN was recalled, and his direct examination resumed as follows:

By Mr. Walter:

Q. Mr. Morgan, have you prepared a table as to the Northern Pacific Railway Company showing on the one side the cost of reproduction as prepared by Mr. Darling, and in another column, so far as checked by you certain figures as per that checking?

A. I have.

Mr. Walter: Let that table be offered as defendant's Exhibit 3-Morgan.

The paper was so marked.

DEFENDANT'S EXHIBIT 3 (MORGAN).

TABLE NO. 1.

NORTHERN PACIFIC RAILWAY CO.

COST OF REPRODUCTION AS OF APRIL 12, 1909.

OPERATED MILEAGE.

Main Line	2,819.92 miles
Branches	2,945.79 miles
Second Track	270.01 miles
Spurs	354.34 miles
Yards & Sidings	1,761.50 miles
Total	8,151.56 miles

		DARLING.	MORGAN.
1	Engineering, 3% of Item 2 to 26, inclusive	$ 10,209,081.00	
2	Right of Way, Station Grounds and Terminals on operated lines	114,693,882.25	*22,938,776.00
3	Grading, Clearing and Grubbing	87,713,979.00	
4	Tunnels	4,589,657.50	
5	Bridges, Trestles and Culverts	23,304,893.00	
6	Ties	20,114,438.51	14,725,155.00
7	Rails	37,692,304.76	31,695,791.00
8	Frogs and Switches	1,446,956.59	1,272,900.00
9	Track Fastenings	5,307,036.05	4,694,828.00
10	Ballast	11,129,075.10	8,431,118.00
11	Track Laying and Surfacing	7,499,435.20	5,706,092.00
12	Fencing Right of Way	905,090.00	
13	Crossings and Signs	202,921.00	
14	Interlocking Plants	138,950.00	
15	Signal Apparatus	83,370.00	
16	Telegraph Lines and Appurtenances	1,553,243.65	
17	Telephone Lines and Appurtenances		
18	Station Buildings and Fixtures	3,408,025.00	
19	General Office Buildings and Fixtures	879,983.00	
20	Shops, Engine Houses and Turntables	5,887,583.77	
21	Shop Machinery and Tools	1,383,306.00	
22	Water Stations	2,642,286.90	
23	Fuel Stations	803,215.00	
24	Dock and Wharf Property	4,708,281.00	
25	Miscellaneous Structures	2,882,586.70	

*20% of Reproduction—Approximate Original Cost.

	DARLING.	MORGAN.
26 Joint Work at Seattle, Exclusive of cost of Grading and Real Estate.	$ 1,332,199.61	
27 Steam Locomotives	18,567,911.57	
28 Passenger Train Cars	7,480,602.00	
29 Freight Train Cars	36,593,737.00	
30 Miscellaneous Equipment	1,978,710.00	
31 Floating Equipment	612,400.00	
32 Mechanical Engineering, 1% of Items 27 to 31, inclusive	652,333.61	
33 Contingencies to provide for legal Expenses, Superintendence, Organization, Unenumerated items, floods, personal injuries and other unforeseen conditions that might arise during the progress of the work—10% of Items 1 to 32, inclusive	41,639,747.50	5% of Items 1 to 32, Inclusive
34 Interest	164,388,682.09	
	$622,425,904.63	
Lines in Manitoba	7,000,000.00	
Duluth Union Depot, exclusive of Right of way	597,545.00	531,275.00
St. Paul Union Depot, 1/9 Interest	627,837.77	483,800.00
Minnesota Transfer Railway, 1/10 Interest	575,600.00	287,325.00
1/3 Interest in Lake Sup. Trml. and Tfr. Ry. Co	116,725.56	
40% Interest in No. Pac. Trml. Co. of Oregon	2,723,010.40	
Big Fork & International Falls Ry	706,537.53	
Minnesota & International Ry. 70% Interest	3,460,839.62	
Supplies on Hand	5,831,584.21	
Lines unedr construction, including Lake Park-Glyndon, Garrison-Missoula, 2nd track Aubuen-Meeker and Green River Branch Extension	9,019,283.45	
Nor. Pac. 1/3 Interest in S. P. & S. Ry. Vancouver to Portland, under construction	1,500,000.00	
Nor. Pac. 1/2 Interest in S. P. & S. Ry., under construction	27,608,733.51	
Total	$682,193,601.68	

Q. Have you undertaken in any wise to check the mileage of the Northern Pacific System?

A. No, I have not.

Q. Can you say whether the mileage as shown by Mr. Darling is or is not correct?

A. I cannot say, although I have every reason to believe it is correct.

Q. What do you say as to engineering taking three per cent of the items 2 to 26 as used by Mr. Darling, having no reference to the amounts of money shown by those items but merely the name?

A. I think that is a very fair percentage to use.

Q. Taking the second item, Right-of-way, station grounds and terminals on operative lines. I note you have there the amount $22,938,776.

A. Yes. That amount, $22,938,776, is an estimate of the original cost of the right of way of the Northern Pacific now used for railway purposes. It is 20 per cent of the reproduction estimate, being approximately the original cost of the lands to the company.

Q. In connection with that have you prepared any table showing lands purchased and their cost?

A. I have.

Mr. Walter: We offer that table in evidence, and ask that it be marked Defendants' Exhibit 4-Morgan.

The paper was so marked.

DEFENDANT'S EXHIBIT 4 (MORGAN).

TABLE 2.

NORTHERN PACIFIC RAILWAY TERMINAL LANDS (LUMBER RATE CASE.)

Location, Column 1.	Area in Acres Column 2.	Production Cost Column 3.	Original Cost Column 4.
St. Paul, Minn	687.56	$12,156,343.89	$2,493,864.44
Minneapolis, Minn	292.60	5,545,328.93	1,215,369.36
Duluth, Minn	598.72	5,477,377.14	817,994.96
Superior, Wis	*949.12	1,904,577.92	442,546.97
Billings, Mont	§ 92.50	1,378,498.90	Charter R/W and Land Grant
Butte, Mont	110.85	1,248,814.26	50,272.60
Spokane, Wash	422.31	8,109,128.62	51,330.00
Tacoma, Wash	†530.55	11,525,728.89	1,072,654.24
Seattle, Wash	‡432.60	26,814,488.18	2,916,538.43
Portland, Ore	18.38	481,305.00	48,875.42
Totals	4,135.19	$74,641,591.73	$9,109,446.42

§ $63,115.00 N. P.'s valuation on contract for use of 70 acres with Burlington (8-1-1904) N. P. sold to private parties in Billings in 1895, 75.33 acres, in 1909, 2.30 acres, (in all, 77.63) for $5,493.70, or $70.76 per acre. This land adjoins the R/W of the Ry. Co.

† 87.28 acres of said R/W in Tacoma is Charter R/W and Land Grant.

* 117,380 acres, original cost $141,288.76, included, which belongs to the Northwestern Improvement Co., and is not yet (7-2-1909) transferred to the N. P. Ry. Co.

* Includes 341.48 acres of R/W, which is owned 1/2 and 1/2 (undivided with the G. N. Ry.), N. P.'s share only of original cost and reproduction cost shown, though the area should be reduced 170.74 acres, in order that a duplication in area might not be indicated.

‡ N. P. exhibit in Lumber Rate Case shown at $4,939,391.48, is in error, and should be reduced $2,022,853.05 to the figures shown in this statement.

Q. Explain that table, Mr. Morgan, and how it was arrived at.

A. That table was prepared from the records of the company through assistants who were working with me and with a representative from Mr. Cooper's office. It shows, first, under column 1, the name of the city; under column 2, the number of acres of land owned, and in column 3 the reproduction cost

as given by the Northern Pacific Company, and in column 4 the original cost of the same lands.

Q. How did you arrive at that original cost?

A. That original cost is taken from the records. It cannot be stated that it is absolutely correct, but it is as nearly so as Mr. Cooper and his assistants and my assistants could arrive at it, and the records were very carefully examined and gone through to try to get the fact as nearly as possible.

Q. I notice you have ten terminal cities shown.

A. Yes, sir.

Q. What was the aggregate reproduction cost as given by Mr. Darling for the railroad property in those cities?

A. As given by Mr. Cooper, I think.

Q. Mr. Cooper, I should say.

A. Mr. Cooper gave that testimony. It amounted to $74,641,591.73.

Q. What was the original cost as shown by the records?

A. $9,109,446.

Q. How did you arrive at the remainder of the 22 millions cost?

A. Out of the 114 million dollars shown on the reproduction estimate, we have been able to locate $74,641,591.73. The original cost in that case represents about 12 per cent.

Mr. Dillard: Are you speaking of item 2 now, on table 1?

The Witness: Yes. We show as original cost $22,938,776, and we have been able to locate as original cost $9,109,446, as shown on Exhibit 4; so that there is $13,829,330 remaining, which would give an approximate original cost to all of the balance of the lands that we have not located of about 35 per cent. My judgment was that that appeared to be at least a fair estimate of the original cost.

Q. Taking that amount in connection with the actual cost on the 74 million reproductive territory, that gives you an average of 20 per cent?

A. About an average of 20 per cent, yes, or more.

Q. As representing the original investment?

A. As representing the original cost of the land, possibly.

Q. Were you able to determine the amount of lands purchased and also donated to the Northern Pacific?

A. Yes. This statement was prepared for the purpose of showing it.

Mr. Walter: We offer in evidence table 3, to be marked defendant's Exhibit 5-Morgan.

The paper was so marked.

DEFENDANT'S EXHIBIT 5 (MORGAN).

TABLE 3.

NORTHERN PACIFIC RAILWAY (LUMBER RATE CASE.)

	Total Acres Right of Way Column 1.	Acres Purchased Column 2.	Acres Donated Column 3,
Wisconsin	3,454.69	2,919.33	535.36
Minnesota	21,532.88	12,136.34	9,396.49
North Dakota	31,831.76	11,965.95	19,865.81
Montana	51,454.97	9,782.85	41,672.12
Idaho	6,357.74	1,969.70	4,388.04
Washington	36,321.57	11,432.57	24,889.00
Oregon	756.72	756.72	.....
Washington & Columbia Ry	2,733.00	1,822.00	911.00
Port Townsend Southern Ry.	461.16	461.16	.....
Duluth Union Depot & Transfer Co	6.94	6.94	.....
Minnesota & International Ry. (N. P. 70% owner)	1,911.94	1,052.21	859.73
Totals	156,823.32	54,305.77	102,517.55

65.4% of Right of Way Donated.
34.6% of Right of Way Purchased.

Q. Explain that table if you please, and state how it was arrived at.

A. This table was prepared in Mr. Cooper's office and shows in column 1 the total number of acres of right of way devoted to railway purposes, being 156,823.32 acres; in column 2 the number of acres purchased, being 54,305.77; and in column 3, the acres donated or granted, amounting to 102,517.55 acres. That shows in substance that 65.4 per cent of the right of way was donated and about 34.6 of the right of way purchased.

Q. Passing now to item 3 on the original reproductive table, under the item Grading, Clearing and Grubbing. Were you able to make any investigation into the amounts, the quantities shown as having been moved or cleared or grubbed?

A. We made some investigations into that, but we found that the records of the Northern Pacific were very incomplete

in respect to that, and very little satisfaction could be gained in undertaking to analyze.

Q. Were you able to make such an investigation as would enable you to make any correct check on the quantities on the Northern Pacific?

A. Only on some lines.

Q. I am speaking now of the Northern Pacific.

A. Of the Northern Pacific, yes. There was not any appreciable difference in the quantities of earth work as shown on the Northern Pacific exhibit covering the cost of grading work done during the years 1900 to 1909. We did find some clerical errors which would not make a very large difference. Now take the exhibit of the Northern Pacific, which shows the cost of grading on the line from Hoquiam to Moclips. Now the yardage that is shown on that statement by the Northern Pacific represents only that which is handled by the contractors, upon a contract price per yard basis. An examination into the data supporting charges to this work shows that in addition to material handled in yardage, on a yardage basis, the Company was handling dirt with a steam shovel from December 1901 to March 1902 and from August to December 1904; they had a force of men quarrying and placing rip rap from December 1901 to March 1902, from August to December 1904, and March to August 1905, all inclusive, and a force account from December 1901 to August 1905 doing miscellaneous grading work, a part of which was doubtless the handling of material not elsewhere taken into consideration. Also there were a great many payments to contractors for force account work. In the making of cuts and fills, the contractors were Nelson and Bennett, together with H. C. Henry, it was provided that all work not possible to be let to subcontractors should be performed by these general contractors, by force account, and the records show that some of the work on the line was so done. As the records of material handled by the company forces and by the contractors on force account were either not made, or the records have not been preserved, it is impossible to ascertain, as I believe, with correctness, the number of cubic yards of material handled in this work.

Q. Now, so far as the amount of grading, clearing or grubbing necessary to be done on the entire system, to reproduce it, is concerned were you able to make any examination which would throw any light on the figures given by the Northern Pacific?

A. No, none except the examination into the details of the

exhibit; that is all. I have not attempted to put a price on earth work myself; I just made an examination of the exhibits.

Q. Now, about the clearing. What price was shown by the Northern Pacific on the clearing?

A. I believe the Northern Pacific used $82. an acre—$80. or $82.

Q. Get it exactly. (Handing paper to witness.)

A. $80.

Q. Now, you have had experience in that kind of work, have you not?

A. Yes.

Q. What do you say is a fair price for doing that kind of work per acre?

A. Of course, that would vary with the conditions that you encounter. There are, undoubtedly, places on the Northern Pacific where the clearing and grubbing would cost $80. perhaps more than that, where the timber is large and heavy, but there are other places on the Northern Pacific where the clearing would be done for very much less than that. And I am of the opinion, from the investigations that I have made in connection with this entire subject that $50. an acre would be a fair price to use for the clearing, as an average price.

Mr. Dillard: You use clearing as distinguished from grubbing?

The Witness: Yes; just the clearing.

Q. Passing to the item of ties, number 6. Have you prepared any table in regard to that item?

A. I have.

Q. What does that show?

Mr. Walter: First let me offer it in evidence as Defendant's Exhibit 6—Morgan. There are four papers in connection with it. I offer them as Defendant's Exhibit 6-A, B, C and D.

DEFENDANT'S EXHIBIT 6A (MORGAN).

TABLE 4–A.

NORTHERN PACIFIC RY. CO. TIES PURCHASED.
STATEMENT SHOWING AVERAGE COST PER TIE FOR THE YEARS 1903 TO 1908, INCLUSIVE, AND SIX MONTHS 1909.

Class	Number of Ties	Cost, Delivered.	Average Cost per Tie.
Calendar, 1903	2,617,691	$ 812,084.36	31.0
Calendar, 1904	2,437,086	711,968.00	29.2
Calendar, 1905	2,017,208	568,220.36	28.2
Calendar, 1906	2,230,569	748,521.39	33.6
Calendar, 1907	5,176,537	2,304,476.00	44.5
Calendar, 1908	2,556,698	1,123,269.75	43.9
Six months, 1909	2,450,367	885,031.64	36.1
Total	19,486,156	$7,153,571.50	36.7

DEFENDANT'S EXHIBIT 6-B (MORGAN)

TABLE 4 B.

NORTHERN PACIFIC RY. CO.

TIES PURCHASED FOR THE YEARS 1903 TO 1908 AND SIX MONTHS 1909.
STATEMENT SHOWING NUMBER OF TIES PEELED AND TIES UNPEELED, BY CLASSES.

	Ties Peeled.			Ties Unpeeled.			Total.
	Number.	Per Cent. of Class.	Per Cent. of Total.	Number.	Per Cent. of Class.	Per Cent. of Total.	
White Oak	137,842	25.61	.71	400,418	74.39	2.05	538,260
Fir	72,498	1.76	.37	4,050,085	98.24	20.78	4,122,583
White Fir and Pine				694,951	100.00	3.57	694,951
Tamarac	55,730	1.13	.29	4,860,905	98.87	24.95	4,916,635
Red and Yellow Fir and Tamarac	311,758	6.04	1.60	4,851,218	93.96	24.90	5,162,976
Maple				9,945	100.00	.05	9,945
Pine	71,588	8.53	.37	768,031	91.47	3.94	839,619
Red Oak	232	.12	* .00	187,546	99.88	.96	187,778
Hemlock				134,638	100.00	.69	134,638
Jack Pine	10,678	3.99	.05	256,910	96.01	1.32	267,588
Cedar	18,075	.92	.09	1,955,631	99.08	10.04	1,973,706
Spruce				8,946	100.00	.05	8,946
Birch	1,101	.39	.01	277,634	99.61	1.42	278,735
Elm	170	.12	* .00	139,419	99.88	.71	139,589
Ash	20	.02	* .00	112,467	99.98	.58	112,487
Unclassified				93,353	100.00	.48	93,353
Unclassified Culls				4,367	100.00	.02	4,367
Total	679,692	.....	3.49	18,806,464	.....	96.51	19,486,156

*Less than 00.01%.

DEFENDANT'S EXHIBIT 6-C (MORGAN)

TABLE 4-C.

NORTHERN PACIFIC RY. CO.

TIES PURCHASED — STATEMENT SHOWING NUMBER OF TIES DELIVERED ON RIGHT OF WAY FOR THE YEARS 1904 TO 1908, INCLUSIVE, AND SIX MONTHS 1909.

Year. A—Delivered on Right of Way.	Number of Ties.	Cost.	Average Cost per Tie.
Calendar, 1904	1,564,491	$ 440,857.13	28.2
Calendar, 1905	1,086,841	301,383.06	27.7
Calendar, 1906	759,496	230,596.02	30.4
Calendar, 1907	2,009,440	785,508.82	39.1
Calendar, 1908	1,092,164	432,672.99	39.6
Six months, 1909	940,032	308,749.68	32.8
Total	7,452,464	$2,499,767.70	33.5
B—Delivered on Cars.			
Calendar, 1904	872,595	$ 271,110.87	31.1
Calendar, 1905	930,367	266,837.30	28.7
Calendar, 1906	1,471,073	517,925.37	35.2
Calendar, 1907	3,057,132	1,486,187.24	48.6
Calendar, 1908	1,464,534	690,596.76	47.2
Six months, 1909	1,510,335	576,281.96	38.2
Total	9,306,036	$3,808,939.50	40.9
Total Ties Delivered.			
A.	7,452,464	$2,499,767.70	33.5
B.	9,306,036	3,808,939.50	40.9
Grand Total	16,758,500	$6,308,707.20	37.6

Percentage of Ties delivered on Right of Way to total 44.47%.

DEFENDANT'S EXHIBIT 6-D (MORGAN)

TABLE 4-D.

NORTHERN PACIFIC RY. CO.

TIES PURCHASED—STATEMENT SHOWING AVERAGE COST PER TIE BY CLASSES FOR THE YEARS 1903 TO 1908, INCLUSIVE, AND SIX MONTHS, 1909

		Number of Ties	Cost Delivered	Average Cost per Tie
White Oak	Hewed	311,942	$ 161,784.22	51.9
White Oak	Sawed	40,682	18,655.15	45.1
White Oak	Peeled	137,842	61,897.82	44.9
White Oak	Culls	47,794	6,117.41	12.8
Fir	Hewed	74,341	23,498.67	31.6
Fir	Sawed	3,943,637	1,327,270.35	33.7
Fir	Peeled	72,498	21,562.62	29.7
Fir	Culls	32,107	5,644.23	17.6
White Fir and Pine	Hewed	694,951	247,099.73	35.6
Tamarac	Hewed	4,754,984	1,859,263.74	39.1
Tamarac	Sawed	1,581	442.68	28.0
Tamarac	Peeled	55,730	16,587.02	29.8
Tamarac	Culls	104,340	13,674.01	13.1
Red and Yellow Fir and Tamarac	Hewed	4,670,250	1,501,471.49	32.1
Red and Yellow Fir and Tamarac	Sawed	178,390	77,639.99	43.5
Red and Yellow Fir and Tamarac	Peeled	311,758	108,403.17	34.8
Red and Yellow Fir and Tamarac	Culls	2,578	383.18	14.9
Maple	Hewed	9,945	3,434.17	34.5
Pine	Hewed	768,028	279,325.28	36.4
Pine	Peeled	71,588	24,329.40	34.0
Pine	Culls	3	.42	14.0
Red Oak	Hewed	187,221	74,435.07	39.8
Red Oak	Peeled	232	59.70	25.7
Red Oak	Culls	325	142.19	43.7
Hemlock	Hewed	134,638	53,973.20	40.1
Jack Pine	Hewed	255,910	70,722.98	27.6
Jack Pine	Peeled	10,678	2,864.26	26.8
Jack Pine	Culls	1,000	150.00	15.0
Cedar	Hewed	1,955,196	971,947.46	49.7
Cedar	Peeled	18,075	7,274.58	40.2
Cedar	Culls	435	41.17	9.5
Spruce	Hewed	8,946	3,010.44	33.7
Birch	Hewed	277,634	96,058.32	34.6
Birch	Peeled	1,101	353.24	32.1
Elm	Hewed	139,419	47,008.02	33.7
Elm	Peeled	170	38.80	22.8
Ash	Hewed	112,467	37,867.89	33.7
Ash	Peeled	20	7.09	35.4
Unclassified	Hewed	93,217	28,701.96	30.8
Unclassified	Sawed	136	61.20	45.0
Unclassified Culls	Hewed	4,367	369.18	8.4
Total		19,486,156	$7,153,571.50	36.7

Q. Now if you will just take those tables, Mr. Morgan and state how you arrived at their contents and what they are intended to show?

A. The first table shows the ties purchased on the Northern Pacific Railway and the average cost per tie for the years 1903 to 1908 and six months of 1909, which we were able to get up to the time of the completion of our investigation. It shows that during that period, 1903, to and including the first six months of 1909 (inclusive) that the Northern Pacific purchased 19,486,156 ties. The cost, delivered, was $7,153,-571.50, or an average price of 36.7 cents per tie.

Q. Table Exhibit 6-B.

A. Table 6-B shows the different classes of ties and the per cent. of ties peeled and unpeeled, showing that about 96-1/2 per cent. of the ties were unpeeled.

Mr. Donnelly: What table are you referring to now?

The Witness: That is the second one, Defendant's Exhibit B.

Q. Now as to table Exhibit 6-C.

A. That shows the manner of the delivery of the ties, whether delivered on the right of way and the cost per tie, and those delivered on cars and the cost per tie; showing a summary of both classes and the average price. The percentage of ties delivered on the right of way was 44.47 per cent. of all the ties received.

Q. Table 6-D.

A. Table 6-D shows the details of the different classes of ties and the number purchased, whether they were hewed or sawed, and the cost delivered, and the average price of each class of tie, also giving the summary again of the average cost of 36.7 cents.

Q. From those figures and from your knowledge of ties were you able to make an approximate estimate of the cost of ties, taking the quantity used by the Northern Pacific in their estimate?

A. Yes, I did.

Q. State what you did and the result.

A. I did not take the average price of ties as shown on that statement, but I took the cost of ties in 1908, which I think, with the exception of 1907, is the highest price paid for cross ties, the highest average price, and used as a base 44 cents; it was 43.9, but I used 44 cents as a base, and then I added to that 1 cent for loading and handling for each and all of the ties. Now we find from the records that about 56

per cent. was delivered on cars, so that is really equivalent to about two cents a tie for all of the ties.

Q. That were really handled?

A. That were really handled. Peeling was allowed at 1-1/2 cents per tie, and the transportation and average haul of 200 miles, as given in Mr. Darling's estimate, but I have used there 6/10 of a cent a ton a mile instead of the full tariff rates.

Q. State why you used that 6/10 of a cent or six mills per ton per mile.

A. I believed that would cover the cost of transportation.

Q. Did you make any inquiry into the per ton mile rates generally on the system and the ratio which lumber ordinarily would take or should take?

A. I only made it in a very general way—that the average revenue per ton per mile on the Northern Pacific is approximately 8-1/2 mills; that assuming that the relation between the cost of operating freight trains and passenger trains was the same, not attempting to separate them but using the statistics of the Interstate Commerce Commission, that the cost of conducting transportation was approximately 55 per cent. for maintenance of way, maintenance of equipment, conducting transportation and general expenses, the cost per ton per mile would be approximately 4.5 mills.

Q. Which is considerable less than the amount—

A. For an average of all classes of freight. Of course this is a low grade of freight, and handled in carload lots, and it seemed to me that 6/10 per ton per mile would be a fair price to use.

Q. What does that give as a unit price upon ties?

A. That gives a unit price to apply here of 58 cents.

Q. And based on the number of ties which Mr. Darling thinks would be necessary to reproduce the system, what does it give as a total tie cost?

A. $14,725,155.

Q. You made similar calculations for switch ties and crossing ties?

A. Yes; I think the price used on those was the same with the exception that the rate was reduced from full tariff rates to 6/10 of a cent a ton per mile.

Q. Passing to item 7—rails.

A. The same price was used on rails. The difference shown in that statement was due entirely to the change in the rate to 6/10 of a cent per ton a mile.

Q. What has been the custom of the Northern Pacific prior to the last two or three years as to freight transportation cost on its own supplies?

A. Such records as we could find in the offices of the Northern Pacific showed that they were charging 5 mills a ton a mile for all classes of construction material and contractors' outfit; then that was changed to full tariff rates.

Q. Have you some copies taken from the records of correspondence on that subject?

A. Yes, I have some letters here in respect to that.

Q. How late do you find the arbitrary allowance of 5 mills continued instead of the actual tariff rates charged to the public generally?

A. As late as 1903, I think.

Q. When was the allowance to tariff rates first put into effect by the Company?

A. I can't give you the exact date of that.

Mr. Donnelly: There is no question that that is the fact—that it was the custom to so charge.

Mr. Walter: Until recent years?

Mr. Donnelly: Until recent years.

Q. As to frogs and switches in item 8, track fastenings in item 9, I notice a different amount from that shown by Mr. Darling's estimate. To what is that due?

A. That is due to the 6/10 of a cent per ton per mile.

Q. Instead of tariff rates you take the 6 mills per ton per mile?

A. Yes.

Q. As to item 10,—ballast.

A. That is due to a difference in the price of ballasting. My judgment in regard to that is that the average cost of ballasting ought not to exceed 50 cents a yard in place.

Q. Upon what is that judgment based?

A. It is based upon the elements of cost which properly ought to enter into ballasting. It is based upon a great many estimates that I have received in regard to ballasting on different lines, and there is no distinction made by the Northern Pacific in the cost of ballasting in Minnesota and for the entire system. The unit price is the same. Of course the illustrations that have been given by the Northern Pacific as to the cost of ballasting cover small pieces of work in some cases, and in others to some extent; but where you start in ballasting lines, the equipment that you require for a small job and the charges for getting it there and getting your

organization would be proportionately greater than if you were undertaking a large piece of work. Therefore I think that 50 cents a yard would be a fair price for the ballasting.

Q. And upon that basis of 50 cents per cubic yard as against what by the Northern Pacific?

A. I think they use 66 cents.

Q. Do you make any difference in the freight charged for men and materials and supplies moved in the ballasting?

A. I have not gone into the details of that feature of it, to analyze that.

Q. Were the records of the Northern Pacific as to these various items in such condition that you could make an exact investigation?

A. Not with satisfaction because the accounts were not carried as they are separated here. They were put together in such way that they had to be arbitrarily taken apart if you got the units of cost, and that is quite a difficult matter and one that would involve not only a great deal of labor, but there would be considerable question of judgment as to what items should properly go in the account.

Q. Passing to item 33—contingencies. If you were going to build a new line, Mr. Morgan, through an unknown country, except as to the surface indications, as usually is the case in projected lines, what allowance would you make and what is usually made?

A. I should make an allowance of 10 per cent.

Q. Is there any difference in that sort of an estimate for a new line and in the socalled reproduction cost of lines like the Northern Pacific and Great Northern?

A. Yes, I think there is.

Q. What difference would you make and why?

A. I would not feel justified in using more than 5 per cent. as a contingency item there because you are making an investigation of an already existing line and in the presence of all of the conditions which exist on the property and which did exist during the time of construction, many of which would be known historically by those connected with the company; and I think that where you can ascertain, as you undoubtedly can, a great many of the uncertain elements, that 5 per cent. is all that would be justified as a contingency charge.

Q. That is to say, where you have the information as to where the quicksand is, where the slides occur, where the accidents occur, have been encountered and paid for in the

actual building of the line, you should not allow 10 per cent. on those items?

A. To illustrate that a little further: Starting out to make an estimate on a new line to be constructed, the surveys are hurriedly made, the classification of material is unknown to a certain extent, the number of cubic yards of masonry that would be required in bridge foundations would be unknown, and you would have to make liberal allowances for items of that kind. When you come to make an estimate on reproduction all of these things are known, the quantities are there, and you can get at them exactly; you know just what has been done, and therefore, you are not working so much in the dark as you would be to go on into a new country, to reproduce something where you knew nothing of the conditions that you would encounter.

Q. That 5 per cent. allowance, then, for contingencies would be liberal enough?

A. I believe it would be a fair allowance.

Q. Now, passing to the question of interest. What is the average interest bearing rate of the outstanding obligations of the Northern Pacific system, if you have made an investigation and calculation?

A. I looked up the record of the securities published in the statistics of the Intersfate Commerce Commission and the rates of interest and, not including the C., B. & Q. joint certificates, the average rate of interest on the outstanding securities, that is, the bonds, is 3.78 per cent.

Q. What time, in your best judgment, would it take to reproduce the Northern Pacific system, using despatch and having all the necessary money—to complete the lines?

A. I believe the line ought to be completed in 8 years time.

Q. You are familiar with the manner of obtaining money and its use in constructing lines?

A. To a certain extent. Of course that is really the business of a financier and not of an engineer.

Q. What proportion of the capital necessary to construct those lines, would, during that entire period, bear interest? In other words, upon what amount, if you knew the amount necessary, should the interest be calculated?

A. I think that a fair base to arrive at would be to say that the capital was fully employed for one-half of the time required to construct the line.

Q. In other words, interest should be computed on the en-

tire amount for half the time, or one-half the capital for all the time?

A. Yes.

Q. Did you make any investigation of the physical value of the Duluth Union Depot, exclusive of right of way in the State of Minnesota, while you were employed by the Minnesota commission?

A. I did.

Q. What is the amount which you think is a fair value for reproduction?

A. $531,275.

Q. Did you make the same or similar examination of the St. Paul Union Depot as to the one-ninth interest owned by the Northern Pacific?

A. Yes, I did.

Q. What amount do you believe to be a fair value?

A. $483,800.

Q. Of the Minnesota Transfer Railway, one-tenth interest, did you make a similar investigation?

A. I did.

Q. And what was the conclusion reached by you?

A. $287,325.

Q. Now, Mr. Morgan, you are familiar with the conditions surrounding traffic in Minnesota, along the lines of the Northern Pacific in a certain degree, are you not?

A. Yes, I know what the conditions are to a certain extent.

Q. What is the prime incentive in an engineer in laying out a projecting line of railway? What is the first thing he wants to achieve in the construction of a road?

A. To get it earning money at the earliest possible moment.

Q. Can you give your opinion, based on your knowledge of conditions in Minnesota and upon the experience of engineers generally in constructing lines, as to whether after a line has been built from Duluth to St. Paul and on out to Fargo, as the Northern Pacific is built, whether that line ought or should earn money over operating expenses—if you are able to give an opinion on that with some intelligence? If not, why, you need not.

A. If we are to proceed upon the theory that a railroad is to be reconstructed or reproduced under the existing conditions, then the counterpart of that theory would be that it would also be possessed of the traffic that it is handling today,

and upon that theory I think that the property would produce more than the operating expenses.

Q. Mr. Morgan, did you read Mr. Elliott's description of the properties of the Northern Pacific Railway, the country through which it runs and the resources along the line of railway?

A. Yes; I read it hastily, but not to give it any very close attention.

Q. In this case, I mean.

A. In this case, yes.

Q. Now, having reference to the kind of railroad which he there described and the resources and the opportunities along that line of railway, could you state whether in your opinion that railroad ought to earn more than operating expenses prior to the time it is turned over from the construction department and is a finished line.

A. Of course I should have to preface that with the statement I made with respect to the lines in Minnesota; that upon the theory it is to be reproduced under the existing conditions and subject to the traffic and business it is now doing, I believe that it would produce more than operating expenses.

Mr. Teal: You preface both of those statements by presuming or assuming that it was produced under existing conditions. Are not the estimates that have been put in—and don't you know that they are—based on existing conditions?

The Witness: They are supposed to be, yes.

Mr. Walter: I understand that is the basis of all of us in the cost of reproduction.

Q. Now, Mr. Morgan, did you make a similar investigation of the Great Northern Railway accounts?

A. I did.

Q. Have you prepared a table for similar items compared with Mr. Hogeland's table?

A. I have.

Mr. Walter: Let that be marked Defendant's Exhibit 7 —Morgan.

DEFENDANT'S EXHIBIT 7 (MORGAN).

(TABLE 1.)

GREAT NORTHERN RAILWAY.

COST OF REPRODUCTION OF THE SYSTEM.

June 30, 1908.

Main Track	6,760.66 miles
Second Track	147.57 miles
Side Tracks	1,620.75 miles
Total all Tracks	8,528.98 miles

		Hogeland.	Morgan.
1	Engineering	$10,153,352.00	
2	Right of Way, Station and Terminal Grounds	87,825,744.00	*21,956,436.00
4	Grading	95,878,362.00	
5	Tunnels	7,656,030.00	
6	Bridges, Trestles and Culverts	19,385,741.00	
7	Ties	20,142,783.00	14,855,331.00
8	Rails	36,577,990.00	34,047,437.00
9	Frogs and Switches	968,030.00	968,030.00
10	Track Fastenings and Other Material	7,864,950.00	7,185,734.00
11	Ballast	10,709,880.00	8,637,000.00
12	Tracklaying and Surfacing	7,927,147.00	5,970,286.00
13	Roadway Tools	172,800.00	
14	Fencing Right of Way	956,415.00	
15	Crossings and Signs	1,800,543.00	
16	Interlocking and Other Signal Apparatus	586,885.00	
17	Telegraph and Telephone Lines	1,879,992.00	
18	Station Buildings and Fixtures	3,985,200.00	
19	General Office Buildings and Fixtures	643,500.00	
20	Shops, Engine Houses and Turntables	4,025,000.00	
21	Shop Machinery and Tools	1,976,016.00	
22	Water Stations	2,886,400.00	
23	Fuel Stations	596,250.00	
24	Grain Elevators	2,275,500.00	
25	Storage Warehouses	34,800.00	
26	Dock and Wharf Property	1,969,300.00	
27	Gas Producing Plants	20,000.00	
28	Miscellaneous Structures	3,071,020.00	
29	Contingencies	16,628,797.00	
	Total Road Items	$348,598,428.00	

		Hogeland	Morgan
30	Steam Locomotives	$16,210,048.00	
31	Passenger Train Cars	5,810,775.00	
32	Freight Train Cars	32,464,727.00	
33	Work Equipment	1,481,772.00	
	Total Equipment Items	$55,967,322.00	
34	Legal, Organization and Other Expenditures	$12,136,972.00	
35	Interest During Construction	93,292,575.00	
	Total General Expenditures	$105,429,547.00	
	SUMMARY.		
	Road	$348,598,428.00	
	Equipment	55,967,322.00	
	General Expenditures	105,429,547.00	
		$509,995,297.00	
36	Stores and Supplies on Hand	8,219,581.00	
37	Lines Under Construction	7,908,002.00	
38	Interest in Terminal Railways	1,302,916.00	
39	Interest in Spokane, Portland and Seattle	21,827,521.00	
	Grand Total	$549,253,317.00	

25% of Reproduction—Approximate Original Cost.

Q. Now, as to the right of way, state what conclusion you reached and upon what basis?

A. The item of right of way is my estimate of the approximate original cost, being 25 per cent. of the reproduction estimate as given. That is based upon an investigation into the original cost.

Q. As shown in table 2?

A. Yes, the original cost as shown from table 2.

Mr. Walter: We here offer that table, to be marked Defendant's Exhibit 8—Morgan.

DEFENDANT'S EXHIBIT 8 (MORGAN).

TABLE NO. 2.

GREAT NORTHERN RAILWAY.
TERMINAL LANDS.
(Lumber Rate Case.)

Location.	Area in Acres.	Reproduction Cost.	Original Cost.
Column 1.	Column 2.	Column 3.	Column 4.
St. Paul, Minn.....	354.12	$8,041,686.00	$1,210,833.37
Minneapolis, Minn...*1*	401.59	14,524,704.00	1,753,253.25
Duluth, Minn.....	27.19	969,152.00	575,200.43
Superior, Wis.....	686.40	1,275,265.00	533,072.63
Spokane, Wash.....	315.68	3,750,000.00	1,124,621.00
Seattle, Wash.....*2*	375.41	24,080,110.00	2,637,565.88
Bellingham, Wash.....	108.00	825,000.00	435,567.81
Everett, Wash.....*3*	250.00	1,500,000.00	437,887.02
Butte, Mont.....	72.00	1,000,000.00	84,475.81
Totals.....	2,590.39	$55,965,917.00	$8,792,477.20

1—Includes Minneapolis Union and Minneapolis Western Rys.

2—Accounting Department records show original cost of lands in Seattle, Washington, as $3,187,565.88, which includes $550,000 expended for filling in Tide Lands, and which filling the Ry. Co. has included under the heading of "Grading" in its Reproduction Estimate. Therefore, Original Cost of Lands in Seattle should be as shown in this statement.

3—From Accounting and Right of Way Department records. Acquired from 1899 to 1908, mostly from 1899 to 1904.

The Witness: An investigation into the records of the Great Northern showed, for the cities named in the table, that the cost of reproduction, according to Mr. Hayden's estimate, is $55,965,917., and the original cost of those same lands was $8,792,477., or about 16 per cent. We have been able to locate definitely $55,965,917. out of the $87,825,744., and the $8,792,477., representing original cost, leaves about $13,163,959, and that amount is about 40 per cent. of the estimated reproduction cost on the balance of the lands that we have not located.

Q. In your judgment, is that $21,956,436. a liberal allowance to cover original cost?

A. I believe it to be a fair allowance on the original cost of the lands.

Q. Why do you take 25 per cent. for the Great Northern as against 20 per cent. for the Northern Pacific?

A. The Northern Pacific benefited in a greater proportion, covering lands donated, than did the Great Northern.

Q. Have you prepared a table showing that?

A. I have.

Mr. Walter: We offer that table in evidence as Defendant's Exhibit 9—Morgan.

DEFENDANT'S EXHIBIT 9 (MORGAN).

TABLE NO. 3.

GREAT NORTHERN RAILWAY.

(Lumber Rate Case.)

	Total Acres Right of Way	Acres Purchased	Acres Donated
	Column 1	Column 2	Column 3
Wisconsin	1,207.03	1,207.03	.....
Minnesota	36,056.32	31,866.67	4,189.65
North Dakota	28,332.32	20,658.66	7,673.66
South Dakota	4,355.18	3,929.77	425.41
Iowa	1,280.46	1,280.46	.....
Montana	32,552.34	19,840.88	12,711.46
Idaho	2,050.00	1,486.58	563.42
Washington	15,848.05	13,955.33	1,890.72
Manitoba	2,514.00	2,514.00	.....
British Columbia	5,084.69	5,084.69	.....
Totals	129,278.39	101,824.07	27,454.32

NOTE.—Lines under construction not taken into account.

21.2% of Right of Way Donated.

78.8% of Right of Way Purchased.

Q. What does that show, Mr. Morgan?

A. That shows that out of a total of 129,278.39 acres the Great Northern purchased 101,824, and there was donated 27,454 acres. That shows that 21.2 per cent. of the right of way was donated and 78.8 purchased.

Q. As against 65.4 donated to the Northern Pacific and 34.6 per cent. purchased by the Northern Pacific?

A. Yes, sir.

Q. Did you make any investigation as to the item of grading on the Great Northern?

A. Yes.

Q. Was that investigation based upon the construction records?

A. Yes.

Q. What did you find as to earth, loose and sold rock and hard pan?

A. We went through the original records of construction on the Great Northern, covering in round numbers seventy-four million cubic yards of earth in excavation, that cost 17.9 cents; 12 million cubic yards of embankment that cost 16 cents per cubic yard; 15,400,000 yards of hard pan that cost 35 cents per cubic yard; 4,800,000 cubic yards of loose rock that cost 41.4 cents per cubic yard, and 10,400,000 cubic yards of solid rock that cost 96.2 cents per cubic yard; making a total of 116,951,222 cubic yards, for which the price paid the contractor was 27.9 cents. We also located the amount of money paid for over haul on the 116 million cubic yards, and adding that it makes a total of 28.92 cents.

Q. On all that material of 116 million cubic yards?

A. 116,951,222 cubic yards.

Q. Do you know what the total of earth, hard pan, loose rock, solid rock, as to quantities shown in the estimate of the Great Northern, was, according to Mr. Hogeland's statement?

A. I do not recall it.

Q. (Handing witness paper.) In round numbers, in millions.

A. Earth, 160,800,000; hard pan, 34,400,000; loose rock, 8,000,000; solid rock, 15,100,000.

Q. Speaking in round numbers—the total of those four would be how many million?

A. About 218 million cubic yards.

Q. Your investigation enables you to locate more than half of the cubic yardage shown on the Great Northern reproduction sheet, 116 out of 218 millions; is that correct?

A. That is right.

Q. That 116 million represented the contractors' work, did it not?

A. It represented the price paid the contractor per yard.

Q. On that quantity moved?

A. Yes.

Q Were you able to locate on that 116 million cubic yards the charge for overhaul?

A. Yes.

Q. What did the records show?

A. They showed that the charge for overhaul was $1,106,-201.29.

Q. How much per cubic yard?

A. Over haul per cubic yard 93/100 of a cent.

Mr. Teal: Do I understand that was from their books and records?

The Witness: That is from their books and records.

Q. Compared with the Northern Pacific, what is the condition of the Great Northern's records covering construction?

A. The Great Northern records are really in very fine condition. They go to great pains in keeping their accounts. Of course it is a matter of spending money. Some lines would not feel justified in doing that; others would.

Q. In that 116 millions what is the average cost per cubic yard of earth, each of the separate items and on the whole?

A. That has already been read into the rocord.

Q. Has it?

A. Yes, sir.

Q. You just gave that?

A. Yes, sir.

Mr. Teal: Pardon me. That was not only contractors' prices, but included all the records you could find as to cost on those items.

The Witness: Oh, no.

Mr. Holden: Now, Mr. Teal, on an average of three times every time we meet you object to my questions as leading. I submit that is the most flagrant leading question I ever heard.

Mr. Teal: I will withdraw that question and put it in another form.

Mr. Holden: Yes, after you have indicated to the witness what you want then you put the question in legal form.

Mr. Teal: What items were included in the result that you reached as to unit cost?

The Witness: That was just the amount of money paid the contractors and does not include any of the extra charges that entered into the cost of grading except the overhaul, which is, as stated 93/100 of a cent.

Mr. Teal: Did you go any further to ascertain what other charges did go into this grading?

The Witnesc: Yes, investigations were made into that, in the exhibits shown there.

Mr. Teal: What was the result of that investigation?

The Witness: I think that the revised table that has been submitted by the Great Northern is substantially correct and conforms to the findings that were made jointly through the men that I had employed there and through Mr. Hogeland's office.

Mr. Holden: You mean by that Exhibit 16 corrected, that was offered by Mr. Hogeland on Monday?

The Witness: Yesterday, yes. I think there are no substantial differences. I think that the correctness on the table show the total charges that appeared in the books.

Mr. Holden: What I had in mind was so as to identify your question on the record. Do you mean to limit your answer to 16 or to 16, 18 and 19? We offered three revised exhibits.

The Witness: Well, it could just as well state 16, 18 and 19 and cover it all.

Q. Now, Mr. Morgan, the 116 millions represented the total amount moved by the contractor; that is all that the contractor moved?

A. That is moved by the contractor.

Q. State whether or not the overheaul of 93/100 of one cent per cubic yard was the overhaul on this 116 millions?

A. That was the overhaul on the 116 millions.

Q. Now, there are certain lines shown on Exhibit 16 as having been built during the years given. Did you check any of the records as to those particular lines?

A. Yes, we checked it in resepct to a number of them.

Q. Give us the result of your investigation as to those lines.

A. The result of the investigation into those lines would not modify the figures as shown in Mr. Hogeland's revised Exhibit 16, if it is proper that all of the book charges shall be considered as representing actual cost. I do not believe that all of the charges which go into construction accounts do represent actual cost. I think that some of them are in excess of what the actual cost would be.

Q. State as to the particular lines what those items are and what your investigation gave.

A. I investigated two lines, first, the line from Columbia Falls to Rexford, taking into account the charges to grading on account of the tariff rates applied to freight and to the transportation of men and material.

Q. What did that show per ton per mile on the freight?

A. The total charges to transportation of men and mate-

rial account amount on that line to $230,275.92. That represents merely the freight charges. We went through the way bills covering all of the material that was shipped over the line, taking the weights off from the way bills, and found that there were moved 6,679,513 tons one mile, and the average charge per ton per mile on that basis was 3.4 cents.

Mr. Holden: Upon what basis?

The Witness: Upon the number of tons moved one mile into the total charges.

Mr. Holden: You mean the actual charges you gave 230 odd thousand?

A. Yes, sir.

Mr. Holden: How much?

A. 3.4 cents.

Q. The construction books show a charge, as I understand it, against each ton of freight hauled one mile, 3.84 cents?

A. 3.4 cents.

Q. 3.4 cents; is that right?

A. Yes, sir. Under the head of "passenger charges" there is charged $322,907.44; the number of passengers carried one mile was 10,984,389, and the average charge per passenger per mile was 2.94 cents. If we take 6/10 of a cent a ton a mile as a base for handling freight and one cent for passengers per mile, being the construction rates, it would make a difference on those lines of 8.8 cents per cubic yard in the price that is finally shown in the last column. The same process was gone through with respect to the line from Curlew to Midway, and in that case we find that the transportation charges over and above 6/10 of a cent a ton a mile and one cent per passenger per mile would amount to 12.3 cents per cubic yard.

Q. Was there any purpose in selecting these two lines to the exclusion of the others? How was the selection made?

A. Not specially. The records are very complete on those lines and they were selected, I might say, haphazard. It was absolutely impossible to undertake to go through them all. It would have been a great satisfaction if it could have been done, but between 70 and 80 thousand way bills were examined to get out even these statistics that we present here. It was a very laborious, tedious task, and it would require a great deal of time to analyze it with respect to all of the lines shown on that exhibit.

Q. I notice in the reproduction estimate for the Great Northern a charge of $82.50 per acre on 31,000 acres of clearing.

A. Yes.

Q. Were you able to locate any of that 31,064 acres?
A. Yes, sir.
Q. How much of it?
A. I located 24,807-1/4 acres.
Q. And what did you find was the average cost of those 24,000 acres?
A. The average contract price for the clearing was $43.57.
Q. What proportion of the total amount of 31,064 acres of clearing deemed necessary by the Great Northern on the entire system were you able to locate? How many acres was that? 31,064?
A. Practically 80 per cent.
Q. In your judgment what would be a fair average cost per acre for clearing 31,064 acres?
A. $50.
Q. As against their price of $82.50?
A. Yes.
Mr. Holden: What is the price you gave?
The Witness: $50 is an average price; some of it more and some of it less.
Q. I believe you have already given the average figures shown on the 116 millions per cubic yard of the various units?
A. Yes.
Q. Now, pass to the item of ties: Did you make any table as to the ties purchased by the Great Northern?
A. Yes.
Mr. Walter: We offer that table in evidence to be marked Defendant's Exhibit 10, Morgan, A. B. C. D and E.
The table was so marked.

DEFENDANT'S EXHIBIT 10A (MORGAN).

TABLE 5-A.

GREAT NORTHERN RY. CO.

TIES PURCHASED. FOR THE YEARS 1902 TO 1908, INCLUSIVE, AND SIX MONTHS OF 1909.

Year.	Number of Ties.	Cost Delivered.	Average Cost per Tie. (Cents)
A. Ties Purchased, excluding Ties for Treating Plant.			
Calendar 1902	1,154,246	$ 321,290.41	27.83
Calendar 1903	1,075,032	361,960.22	33.67
Calendar 1904	2,035,065	694,103.07	34.11
Calendar 1905	1,671,546	549,731.47	33.90
Calendar 1906	1,817,328	654,334.09	36.00
Calendar 1907	2,940,379	1,366,728.12	46.47
Calendar 1908	3,594,483	1,582,356.16	44.02
6 months 1909	1,427,579	524,644.67	36.75
Total	15,715,658	$6,055,148.21	38.53
B. Ties Purchased for Treating Plant.			
Calendar 1902	691,169	$151,921.41	23.427
Calendar 1903	774,382	184,750.66	23.857
Calendar 1904	390,282	102,222.56	26.191
Calendar 1905	161,140	40,582.69	25.185
Calendar 1906	344,537	90,977.86	26.405
Calendar 1907	370,823	134,504.91	36.271
Calendar 1908	380,787	153,044.84	40.192
6 months 1909	124,969	49,674.29	39.749
Total	3,238,089	$ 917,679.22	28.340
TOTAL TIES PURCHASED:			
A	15,715,658	$6,055,148.21	38.53
B	3,238,089	917,679.22	28.340
Total	18,953,747	6,972,827.43	36.788
C. Total Ties purchased including Ties for Treating Plant.			
Calendar 1902	1,845,415	$ 483,211.82	26.18
Calendar 1903	1,849,414	546,710.88	29.56
Calendar 1904	2,425,347	796,325.63	32.83
Calendar 1905	1,832,686	590,314.16	32.21
Calendar 1906	2,161,865	745,311.95	34.48
Calendar 1907	3,311,202	1,501,233.03	45.34
Calendar 1908	3,975,270	1,735,401.00	43.65
6 months 1909	1,552,548	574,318.96	36.99
Grand Total	18,953,747	6,972,827.43	36.788

DEFENDANT'S EXHIBIT 10B (MORGAN).

TABLE 5-B.

GREAT NORTHERN RY. CO.—TIES TREATED.

STATEMENT SHOWING COST OF TREATING TIES FOR THE YEARS 1902 TO 1908 INCLUSIVE AND SIX MONTHS OF 1909.

Year.	Number of Ties Treated	Cost of Treatment	Average Cost per Tie (Cents)	Per Cent of Ties Treated of total Ties Purchased Table 1-C Per Cent
Calendar, 1902.....	650,808	$88,900.37	13.66	35.27
Calendar, 1903.....	808,508	98,880.53	12.23	43.73
Calendar, 1904.....	315,233	43,628.25	13.84	13
Calendar, 1905.....	222,166	42,766.96	19.25	12.06
Calendar, 1906.....	278,815	50,047.29	17.95	12.89
Calendar, 1907.....	227,049	47,771.11	21.04	6.86
Calendar, 1908.....	563,823	90,948.78	16.13	14.18
6 months, 1909.....	137,602	28,208.41	20.50	8.86
	3,204,004	491,151.70	15.33	16.90

AVERAGE COST OF TREATING TIES.

16.90% of 15.33 cents equals 2.59 cents.

DEFENDANT'S EXHIBIT 10C (MORGAN).

TABLE 5-C.

GREAT NORTHERN RY. CO.

TIES PURCHASED FOR THE YEARS 1902 TO 1908, INCLUSIVE, AND SIX MONTHS OF 1909.

STATEMENT SHOWING NUMBER OF TIES PEELED AND TIES UNPEELED, BY CLASSES.

CLASS.	TIES PEELED.			TIES UNPEELED.			
	Number	Per Cent of Class.	Per Cent of Total.	Number.	Per Cent of Class.	Per Cent of Total.	Total.
White Oak	.....	.....	.....	357,466	100.00	1.89	357,466
Pine	2,074	1.08	.01	190,239	98.92	1.00	192,313
Tamarac	331,201	4.20	1.75	7,557,998	95.80	39.86	7,889,199
Fir	.....	.....	.....	122,564	100.00	.65	122,564
Tamarac and Fir	1,377,087	72.52	7.27	1,898,930	27.48	10.02	3,276,017
Cedar	56,349	1.73	.29	3,254,623	98.27	17.17	3,310,972
Cedar and Fir	28,759	4.41	.15	65,222	95.59	.34	93,981
Hemlock and Tamarac	.....	.....	.....	111,241	100.00	xx .58	111,241
Hemlock	.....	.....	.....	250	100.00	.00	250
Tamarac, Fir and Pine	.....	.....	.....	14,200	100.00	.07	14,200
Tamarac, Fir and Cedar	.....	.....	.....	22,013	100.00	.12	22,013
Fir and Pine	.....	.....	.....	57,437	100.00	.31	57,437
Spruce	.....	.....	.....	8,119	100.00	.04	8,119
Elm	.....	.....	.....	13,436	100.00	.08	13,436
Ash	.....	.....	.....	7,516	100.00	.04	7,515
Ash and Elm	.....	.....	.....	16,082	100.00	.08.	16,082
Tamarac and Pine	.....	.....	.....	27,681	100.00	.14	27,681
Birch, Creosoted	.....	.....	.....	10,014	100.00	.05	10,014
Cedar, Tamarac and Fir Culls	.....	.....	.....	20,164	100.00	.11	20,164
Cedar, Tamarac and Pine Culls	.....	.....	.....	23,211	100.00	.13	23,211
Soft Culls	.....	.....	.....	141,783	100.00	.75	141,783
Ties for Treating Plant oo	.....	.....	.....	3,238,089	100.00	17.08	3,238,089
Total	1,795,470	.....	9.47	17,158,277	.....	90.53	18,953,747

xx Less than 00.1%. oo Data by classes not available.

DEFENDANT'S EXHIBIT 10D (MORGAN).

TABLE 5-D.

GREAT NORTHERN RY. CO.

STATEMENT SHOWING NUMBER OF TIES DELIVERED ON RIGHT OF WAY, FOR THE YEARS 1904, 1906, 1907, 1908 AND 6 MONTHS OF 1909.

Year	Number of Ties	Cost	Average Cost per Tie
A. Delivered on right of way.			
Calendar 1904	930,419	$279,386.26	30.03
Calendar 1906	1,281,452	440,845.65	34.37
Calendar 1907	1,060,316	405,133.41	38.21
Calendar 1908	2,254,839	829,452.57	36.79
6 months 1909	1,050,434	365,228.17	34.77
Total	6,577,460	2,319,686.06	35.27
B. Delivered on cars (including ties purchased for treating plant).			
Calendar 1904	1,494,928	516,939.37	34.58
Calendar 1906	880,413	304,826.30	34.62
Calendar 1907	2,250,886	1,096,099.62	48.69
Calendar 1908	1,720,431	905,948.43	52.66
6 months 1909	502,114	209,090.79	41.64
Total	6,848,772	3,032,904.51	44.28
Total ties delivered:			
A.	6,577,460	2,319,686.06	35.27
B.	6,848,772	3,032,904.51	44.28
Grand Total	13,426,232	5,352,590.57	39.87

Percentage of ties delivered on right of way to total: 48.99%.

AVERAGE COST OF TIES:

C. Delivered on cars (excluding ties purchased for treating plant).			
Calendar 1904	1,104,646	$414,716.81	37.54
Calendar 1906	535,876	213,848.44	39.91
Calendar 1907	1,880,063	961,594.71	51.15
Calendar 1908	1,339,844	752,903.59	56.20
6 months 1909	377,145	159,416.50	42.27
Total	5,237,374	2,502,480.05	47.78

DEFENDANT'S EXHIBIT 10E (MORGAN).

TABLE 5-E.

GREAT NORTHERN RY. CO.—TIES PURCHASED.

STATEMENT SHOWING AVERAGE COST BY CLASSES FOR THE YEARS 1902 TO 1908 INCLUSIVE AND SIX MONTHS OF 1909.

CLASS	Number of Ties	Cost Delivered	Average Cost per Tie
White oak, hewed	260,582	$ 119,595.07	45.89c
White oak, hewed and split	305	151.54	49.65
White oak, sawed	73,569	36,023.19	48.95
Mongrel oak	1,209	202.35	16.73
Oak culls	21,781	2,380.73	10.93
Pine, hewed	166,867	65,120.93	39.05
Jack pine, hewed	5,336	1,600.50	30.
Pine, sawed	18,037	6,742.23	37.38
Pine, hewed and peeled	2,074	646.69	31.18
Tamarack, hewed	7,539,710	3,018,419.46	40.03
Tamarack, hewed and peeled	331,201	96,577.94	29.16
Tamarack, culls	18,288	2,123.74	11.61
Fir, hewed	26,992	6,494.98	24.06
Fir, sawed	95,572	25,995.12	27.20
Tamarack and fir, hewed	968,712	284,137.18	28.33
Tamarack and fir, sawed	930,218	390,212.51	41.95
Tamarack and fir, hewed and peeled	1,377,087	453,329.08	32.92
Cedar, hewed	3,175,454	1,342,962.59	42.29
Cedar, hewed and peeled	56,349	17,421.89	30.92
Cedar, hewed and split	12,262	4,291.70	34.
Cedar, sawed	64,362	18,341.76	28.50
Cedar, culls	2,545	232.97	09.15
Cedar and fir, hewed	52,775	15,192.06	28.79
Cedar and fir, hewed and peeled	28,759	7,764.93	27.
Cedar and fir, sawed	12,447	3,485.16	28.
Hemlock and tamarack, hewed	111,241	35,919.54	32.29
Hemlock, hewed	250	81.25	32.5
Tamarack, fir and pine, sawed	14,200	5,220.21	36.76
Tamarack, fir and cedar, sawed	22,013	7,989.31	36.29
Fir and pine, sawed	57,437	20,975.35	36.52
Spruce, hewed	8,119	2,435.70	30.
Elm, hewed	13,436	4,470.97	33.27
Ash, hewed	7,615	2,475.60	32.94
Ash and elm, hewed	16,082	4,668.09	29.02
Tamarack and pine, hewed	27,681	9,695.13	35.02
Birch, creosoted	10,014	6,509.10	65.
Cedar, tamarack and fir, culls	20,164	2,016.40	10.
Cedar, tamarack and pine, culls	23,211	2,322.13	10.
Soft culls	141,763	30,922.83	21.81
	15,715,658	6,055,148.21	38.53
Ties to Treating Plant*	3,238,089	917,679.22	28.34
	18,953,747	6,972,827.43	36.78c

*Classes not available.

Q. Please explain those tables, and explain how you arrived at them?

A. These tables are prepared in the same way as the tables admitted in the case of the Northern Pacific. Table 10-a shows the number of ties purchased between 1902 and 1909, inclusive, showing separately the ties purchased for the tie-treating plant and those which were purchased to go into the line without going to the treating plant. It shows also the total ties purchased, including the ties for the treating plant, at an average cost for the several years mentioned of 36.78 cents. Table 10-B shows the operations of the tie treating plant and the cost of treating ties during the same period.

Q. What would that be per tie on the whole of the ties?

A. It shows this: that during that time 16.9 per cent. of all of the ties purchased had been treated at a cost for each tie, amounting to 15.33 cents, which would be equivalent, in reducing it to all ties on the system, to 2.59 cents. Table 10-C shows the number of ties peeled and unpeeled, of which about 90 per cent. of the ties were unpeeled. Table 10-D shows the number of ties delivered on right of way, the number of ties delivered on cars, with a total of 48.9 per cent. of the ties delivered on the right of way, the balance on cars. Table 10-E shows the various classes of ties and the price paid for each class of tie, and the average for all classes of ties purchased, of 36.78 cents. In making up my estimate on the cost of ties I used the figures for 1908, which amounts to 43.65 cents.

Q. That is considerably higher than the 1909 price, isn't it?

A. That is higher than what was paid during 1909, although I want to say this with respect to 1909: those figures are shown there because we took them up to the last records that were available, but I hardly think that the number of ties that would be purchased during the first six months would be altogether a complete index of the cost of ties during that time. It might vary on the ties purchased. Taking 43.65 cents as a base for the average cost of all ties purchased in 1908, and loading and handling at one cent each, and the peeling at a cent and a half, and the treating of 16.9 per cent. of the ties at 2.59 cents each, for all of the ties in the system, and transportation, 250 miles, at 6/10 of a cent per ton per mile would give us 59.74 cents, and I have used in this case 60 cents as the cost of the tie. The cost of the tie in itself on the Great Northern and the Northern Pacific is very close, but the Great Northern is treating some of its ties and there-

PAGE CUT OFF

fore would be justified in using a higher price to cover the cost of the treating in proportion to the number of ties that they have actually treated.

Q. Taking that unit price of 60 cents, it gives you what amount as the total for ties on the Great Northern?

A. $14,835,331.00.

Q. Now, as to rails, frogs, switches, track fastenings and other material: how did you arrive at the items you have there?

A. The unit prices are substantially the same. I think there is largely a difference in the transportation cost, as I have made it 6/10 of a cent a ton a mile.

Q. The difference on the rails, frogs, switches, track fastenings and other material is due to you taking 6 mills per ton for freight instead of the full rate as charged in the Great Northern estimate?

A. Yes.

Q. Now, passing to ballast. What enquiry were you enabled to make and with what result?

A. I made some special enquiry as to the cost of ballasting in addition to those which appeared on that table submitted by Mr. Hogeland—Exhibit 16 corrected I believe it is.

Mr. Hogeland: Exhibit 18.

The Witness: That is right, Exhibit 18.

Q. Did you prepare a table as to cost of ballasting, sag raising and bank widening, as shown by actual work done on the Great Northern?

A. I did.

Mr. Walter: We offer that in evidence as Defendant's Exhibit 11—Morgan.

Location.	Date	Authority No.	Ballasting and Sag Raising.			Bank Widening.			Miscellaneous.			Summary.		
			Cubic Yards	Unit Price	Estimated Cost	Cubic Yards	Unit Price	Estimated Cost.	Lining and Dressing Track.	Raising Bridges	Engineering and Superintendence.	Cubic Yards.	Total Estimate	Unit Price
Spokane and Crater, Wash.														
Estimate	5-11-1903	8157	158,000	30.0c	$ 47,400.00	324,000	12.0c	$ 38,800.00	$ 7,280.00	$ 4,200.00	$ 1,800.00	482,000	$101,480.00	21.0c*
Actual Cost			159,850	31.7		347,680	26.3					507,530	152,351.81	30.0
Deer River and Cass Lake, Minn.:														
Estimate	10-20-1903	9984	66,500	31.5	20,900.00	50,200	15.0	7,580.00	2,662.50	131.00	3,109.50	116,700	34,359.00	29.5
Actual Cost			52,874			47,068						99,942	33,026.70	33.0
Hinckley and Nickerson, Minn.:														
Estimate	10-20-1903	9985	60,200	30.0	18,060.00	66,100	15.0	9,915.00	3,202.00	75.00	3,186.00	126,300	35,077.00	27.7
Actual Cost			68,783	28.0		71,100	25.7					139,883	35,706.14	26.0*
Brook Park and Coon Creek, Minn.:														
Estimate	6-15-1905	10955	59,800	30.0	17,946.00	17,730	15.0	2,695.50	2,954.25		2,355.95	77,530	27,698.00	35.6§
Actual Cost			47,720			16,611						64,331	23,336.18	36.2
Bridge 274.2 and Espanola, Wash.:														
Estimate	1-5-1906	11989	49,560	35.0	17,346.00	59,600	13.0	5,148.00	1,750.00	200.00	350.00	89,160	24,794.00	27.7
Actual Cost			44,460			27,510						72,030	37,374.85	52.0
Barmsiria and Crookston, Minn.:														
Estimate	4-8-1905	11310	160,200	35.0	56,070.00	30,750	18.0	5,535.00	6,000.00	3,351.00	3,650.00	190,950	75,936.00	39.7
Actual Cost			185,330			69,325						274,655	79,478.92	29.0
Delta and Bellville, Wash.:														
Estimate	8-23-1905	11860	128,000	30.0	37,300.00	125,000	16.0	20,000.00	3,210.00	500.00	1,500.00	253,000	62,810.00	25.0
Actual Cost			89,470			135,012						224,482	62,975.51	28.0
Tudor and Ellis, Minn.:														
Estimate	6-15-1905	11650	52,000	40.0	20,800.00	12,000	16.0	1,920.00				64,000	27,882.00	43.5
Actual Cost			58,471			12,000						70,471	33,070.71	46.9
Grand Forks and Larimore, N. D.:														
Estimate	8-14-1906	12536	50,000	20.0	10,000.00	48,000	18.0	8,658.00	7,095.00	240.00	1,295.00	98,000	27,317.00	27.9
Actual Cost			13,820			58,405						72,225	19,184.87	26.5
Billingham and Cloverdale, Wash.:														
Estimate	1-31-1905	11027	52,000	35.0	18,200.00	43,000	6.0	6,880.00	2,182.50	600.00	1,050.00	95,000	29,613.00	31.2
Actual Cost			31,150			64,275						115,425	30,860.39	25.8
Crookston and Int. Boundary, Minn.:														
Estimate	4-8-1905	11316	211,600	35.0	74,060.00	12,500	18.0	2,250.00	6,900.00	2,253.00	4,500.00	224,100	96,403.00	43.0
Actual Cost			214,539			63,300						277,839	103,694.45	39.0†
Grand Forks and Larimore, N. D.:														
Estimate	8-14-1906	12536	50,000	20.0	10,000.00	48,000	18.0	8,658.00	7,095.00	240.00	1,295.00	98,000	27,317.00	28.0
Actual Cost			13,820			58,405						72,225	19,184.87	26.5
E. Grand Forks and St. Vincent Jct., Minn.:														
Estimate	8-15-1906	12537	31,000	22.0	6,820.00	18,000	15.0	2,700.00	5,350.00	200.00	777.00	49,000	15,867.00	32.4
Actual Cost			34,056	39.9								34,056	13,498.82	39.9
Monitor and Leavenworth, Wash.:														
Estimate	2-7-1906	12015	41,800	35.0	14,630.00	43,900	16.0	7,024.00	1,640.00	150.00	600.00	85,700	24,044.00	28.0‡
Actual Cost			51,780			46,772						98,552	43,974.73	44.7
Clearwater Jct. and St. Cloud, Minn.:														
Estimate	5-28-1907	13313	179,200	45.0	80,640.00	175,420	20.0	35,084.00	5,615.95	2,376.00	6,344.65	354,620	133,234.00	37.5
Actual Cost			152,039			67,790						219,829	108,345.97	48.3
Total Estimate			1,349,860	33.3c	$449,902.00	1,054,200	15.4c	$162,647.50	$ 62,937.20	$ 14,516.00	$ 31,813.10	2,404,060	$746,821.00	31.1c
Total Actual Cost			1,218,162			1,112,311						2,343,475	$794,064.92	33.9

*Cost divided by company in its accounts.
§11,882 cubic yards stripping Hinckley Pit—15c.
†29,250 cubic yards digging out centers.
‡Track badly off center and had to be lined over after work was done. Eight months to do work. Badly delayed by trains.

Q. Now explain that table and how you arrived at it?

A. This table is prepared from the records in the auditor's office and in the chief engineer's office, showing the cost of doing ballasting, bank widening and sag raising on the Great Northern from 1903 to 1907. It shows the authority number in column 2—it shows the authority number under which the work was done. The next column shows the number of cubic yards of ballasting and sag raising and the unit price and the estimated cost. Under "bank widening" it shows the number of cubic yards, the unit price and the estimated cost. Under "miscellaneous" it shows charges for lining and dressing the track, raising bridges, for engineering and superintendents, the last three columns being the summary, which shows the total number of cubic yards, the total estimated cost, and the unit price. In each one of these locations—take for example, the first one, Spokane to Crater, Washington: the first line of figures represents the estimate made by the chief engineer as to the cost of doing these various pieces of work. The second line of figures is the actual cost of doing that work, as taken from their cost records. Under the fourth column: the estimate for the ballasting was 30 cents per cubic yard; the actual cost of the ballasting was 31.7 cents per cubic yard. Under "bank widening" the estimated cost was 12 cents per cubic yard, and the actual cost was 26 cents per cubic yard. Under the head of "lining, raising and dressing tracks" I have not carried out those items in the cost, but I have shown in the summary the total charges which do include all of those costs. And we find then that for all of the work estimated to be done on that authority, the estimated cost was 21 cents and it actually cost 30 cents. Now, that same process follows all the way through on each of the exhibits. The final result is this: that for ballasting and sag raising, covering 1,349,860 cubic yards, the estimate of the chief engineer was an average of 33.3 cents per cubic yard; that of the total amount of bank widening, the estimate of the engineer, covering 1,542,200 cubic yards, was 15.4 cents, and that the total cost of all of the work estimated to be done, covering 2,404,060 cubic yards, was $746,821, or an average for all classes of work done for ballasting, sag raising, bank widening, and including the miscellaneous charges which entered into it, of (estimated) 31.1 cents, and that for the actual number of cubic yards moved and the actual charges in their construction books for all of this work done it amounts to 33.9 cents per yard.

Q. Now, Mr. Morgan, based on your investigation of the records and upon your knowledge what unit price for ballasting did you take?

A. Well, of course, I should want to say in connection with the exhibit of the Great Northern, as in the case of the Northern Pacific that the elements of cost which enter into doing small pieces of work would necessarily be greater than if you were undertaking a large piece of work. My judgment is, that all things considered, a price of 50 cents a yard would be a fair price for the ballasting on the system.

Q. How much?

A. 50 cents a yard.

Q. Now, Mr. Morgan, I do not know whether I asked you as to the Northern Pacific. I believe their estimate shows ballast for the entire line. Is that correct?

A. It does.

Q. Can you state of your own knowledge whether their entire line is fully ballasted?

A. There are some lines in Minnesota that are not ballasted.

Q. Passing to the next item of track laying and surfacing—and that is an item which I overloked on the Northern Pacific. I wish you would go back to the Northern Pacific so that we can get that in. How did you arrive at your figure of $5,706,092 for track laying and surfacing?

A. I used as a base in track laying and surfacing $700 a mile.

Q. Why did you take that figure?

A. I thought that it would be a fair figure to use. In the first place, considering that track laying today, on any extensive piece of work, is done with modern machinery, with track laying tools and appliances, for which contract for the work can be let for $300 to $350 a mile, and all of the incidental expenses incident to track laying and surfacing which would be necessary, taking into account that your line is to be immediately ballasted, I think that $700 a mile would cover the expense of doing the work.

Q. And based upon that amount per mile you get the items shown in the second column in the Northern Pacific?

A. Yes, amounting to $5,706,092.

Q. As to the same item on the Great Northern, what do you say?

A. The same conditions govern me as in the case of the Northern Pacific.

Q. Based on $700 a mile?
A. Yes.
Q. What do you say as to contingencies?
A. I think that the base of contingencies put in by the Great Northern really amounts to about 5 per cent. on all of the items, but they have eliminated contingencies on certain of the items and put in 10 per cent. on those certain items; but if that 10 per cent. is spread over all of the items it amounts to practically about 5 per cent. of all of the items that would be included in the case of the Northern Pacific, and I think 5 per cent. is about right.
Q. What is the average rate of interest on the outstanding obligations of the Great Northern, if you know?
A. I have not looked that up; I do not know what they are.
Q. You are acquainted with the Great Northern lines in Minnesota, from personal investigation made while you were with the Minnesota Commission?
A. Yes.
Q. Have you any information generally of the line?
A. Of the entire system?
Q. Yes; or even in a general way?
A. I have not been over the Great Northern system much outside of Minnesota; and while I have of course a general knowledge of the country through which it runs, in traveling over other lines, I could not say that my knowledge of the entire system would be complete.
Q. Based upon your knowledge of the conditions in Minnesota, if the line be reproduced, with conditions existing as they are today, will you state whether or not prior to the release of the road from the construction department over to the operating department it would earn any revenue over and above operating expenses?
A. I should answer that question in precisely the same way that I answered the same question in the Northern Pacific. I believe that it would upon the theory as presented.
Mr. Teal: I requested from Mr. Donnelly, yesterday, a statement respecting the lands of the Northern Pacific Railway Company under the land grant, as to acreage and disposition. The exhibit has been furnished by Mr. Cooper, and I stated that I would take his certificate as correct, without putting him on the stand, and I now offer this statement in evidence as Defendant's Exhibit 12—Cooper.

STATEMENT REQUESTED BY MR. TEAL AND FILED AS PART OF MR. COOPER'S TESTIMONY (SEE RECORD PAGE 888).

DEFENDANT'S EXHIBIT 12 (COOPER).

STATEMENT OF LAND GRANT OPERATIONS
NORTHERN PACIFIC RAILWAY COMPANY.

	Acres.
Lands West of Missouri River acquired at foreclosure sale Sept. 1st, 1896	26,324,490.01
Lands East of Missouri River acquired at foreclosure sale Sept. 24th, 1899	2,493,807.98
Total	28,818,297.99
Net area sold Sept. 1, 1896, to June 30, 1909	18,696,734.51
Unsold area June 30th, 1909	10,121,563.48

NOTE.—Until all the land grant is surveyed and patented to the Company, probably ten years hence, the exact area cannot be determined, therefore the acreage given above as acquired and unsold is estimated only.

Net cash receipts by Northern Pacific Railway Company for Land Grant from Sept. 1, 1896, to June 30, 1909	$36,079[illegible].00

Disposition made of net cash receipts:

Applied to retire Missouri Division, Pend d'Oreille Division and General First Mortgage Bonds of Northern Pacific Railroad Company	$10,166,774.45
Paid to Trustees Northern Pacific Railway Company's Prior Lien Mortgage	25,912,572.55
Total	$36,079,347.00

I certify that the foregoing statement is correct, and request that it be considered as a part of my testimony in the Lumber Rate case.

THOMAS COOPER,

Land Commissioner, Northern Pacific Railway Company.

St. Paul, Minn.,
November 23rd, 1909.

A recess was here taken until 2 o'clock p. m.

Afternoon Session.

Mr. Holden: In connection yesterday with Mr. Teal's request for figures reported by the Commission of the State of Washington, as compared with the figures reported by the railroad to the Commission in connection with the valuation made by the authorities of the State of Washington, I have had prepared an exhibit showing a comparison of the totals of the figures, which I now tender to the other side in accordance with the promise which I made then, reserving, of course, the objection also made at that time to the competency and relevancy of the testimony.

Mr. Teal: And to the defendants, of course, the right to check it up and present figures if it varies.

Mr. Holden: If you want this as an exhibit, you should offer it.

Mr. Teal: I thought you would do it for me.

Mr. Holden: No, I have not offered it.

Mr. Teal: Subject to the right of correction and examination I have just stated, I now offer this statement prepared by the officials of the Great Northern Railway Company, showing the differences between the cost of reproduction in the State of Washington as determined by the railway company and the board of railway commissioners, as of June 30, 1906, and would suggest that in order to save having so many exhibits around, it being short, it might be copied by the stenographer into the record.

The table produced by Mr. Holden is as follows:

Great Northern Railway Company

Comparison of the estimated cost of reproduction in the State of Washington, as determined by the Railway Company and the Board of Railroad Commissioners, as of June 30, 1906.

	Railway	State
All items except Right of Way, Station and Terminal grounds,	$55,581,275.00	$41,565,867.00
Right of Way, Station and Terminal Grounds,	33,360,438.00	17,105,692.04
	$88,941,713.00	$58,671,559.04
Valuation of land not used for Railroad purposes, same not being included in State's estimate,		9,319,239.66
Totals,	$88,941,713.00	$67,990,798.70

Chief Engineer's Office,
November 24, 1909.

Mr. Walter: I want to ask one question: Of the land not used for railroad purposes, the same not being included in state's estimation, $9,319,239.66, is the valuation fixed by the state or by the railway on that property?

Mr. Hogeland: That is the state's valuation.

Mr. Walter: The state's valuation on that particular property?

Mr. Hogeland: Yes, sir.

Mr. Holden: The land covered by that figure is included with all the rest of the railroad land in the figure reported by the railroad $33,360,438, I assume.

Mr. Walter: You assume or—

Mr. Holden: I am satisfied that is the case. The railroad company claims that all the lands were railroad lands and proper to be considered as such, and the authorities of the state have taken a different view.

Mr. Donnelly: I will have a corresponding statement from the Northern Pacific that will be prepared in a day or so, which may be filed.

Mr. Teal: Will you please file it for me, Mr. Donnelly, under the same conditions, and to be considered filed by me, and then you can send me a copy to Washington.

The statement was subsequently furnished by Mr. Donnelly and is as follows:

Northern Pacific Railway Company.

Comparison of the estimated cost of Reproduction in the State of Washington, as determined by the Railway Company and the Board of Railroad Commissioners, as of June 30th, 1906.

	Railway	State
All items except Right of Way, Station and Terminal Grounds, and Equipment,	$77,143,703.00	$61,680.340.75
Equipment	No estimate made	14,724,695.94
Right of Way, Station and Terminal Grounds (Valuation of land not used for railroad purposes not included	No estimate made	32,862,872.00
		$109,267,908.69

Office of Principal Ass't Engineer,
St. Paul, Minnesota,
November 29th, 1909.

DWIGHT C. MORGAN, recalled on behalf of complainants, testified:

Cross-Examination by Mr. Holden.

Q. Mr. Morgan, in stating yesterday your previous experience as a civil engineer in connection with railroad matters, I think you stated that it was about 1887 that you did your first railroad work; or am I in error about that?

A. Yes, about 1887.

Q. That was the beginning of your experience as a railroad engineer?

A. Yes.

Q. And that work was where, with what company?

A. It was on the construction of the Cairo bridge across the Ohio river for the Illinois Central Company.

Q. And your caapcity there was what?

A. I was rod-man and inspector of cement.

Q. How long were you occupied in that work?

A. I was there about a year, I think.

Q. From that work you then went into what?

A. I went to the St. Louis Merchants bridge.

Q. And had similar duties perhaps there?

A. Yes, sir.

Q. And you were occupied in that work how long?

A. I don't recall, Mr. Holden, how long I was there. I was there until after part of the superstructure was erected.

Q. Then your next railroad experience was where? I see by referring to your testimony of yesterday that you were engaged on the Merchants bridge in 1889 and 1890.

A. Yes, sir.

Q. In 1891 you went to work with the Northern Pacific Company as rod-man between Garrettson and Helena, and later as draughtsman and instrument-man on the line over St. Regis Pass. In 1892 you became assistant engineer connected with the Southern Pacific, with headquarters at Oakland, having duties to perform in connection with the maintenance of way. I don't quite understand just what those duties were, Mr. Morgan. Did you have anything to do then with construction?

A. No; that was maintenance work.

Q. It was dealing with the line already in existence and in operation?

A. Yes.

Q. And dealing with the ordinary duties which are understood in railroad parlance to be defined by the expression "maintenance of way"?

A. That is right.

Q. How long were you with the Southern Pacific from the time you went with them in 1892 before you resigned to go with your father in the work you have referred to?

A. I think I was there about a year and a half.

Q. As I note in your testimony you say later that in 1893 you returned to Illinois?

A. Yes. Well, it was probably not as long as that; I think it was about a year. I don't recall now, I haven't kept the dates.

Q. What I had in mind was that between some time in 1892 and the date in 1893 when you returned to Illinois you were engaged with the Southern Pacific in the capacity you state, and also assisted your father in the investigation of railroads in California for the Commission of that state?

A. Yes.

Q. Both of those pieces of work being included within a time from some date in 1892 to some date in 1893?

A. Yes, sir.

Q. In 1893 you went with the Illinois Railroad Commission, and your duties then were in connection with making examinations and reports upon the character of the construc-

tion and equipment of the railroads in that state, supervision over interlocking apparatus and matters of that character, and you remained in that occupation until 1897 when you became assistant to the chief engineer of the Illinois Central. Is it a fair statement, Mr. Morgan, that until your employment in 1897, at least, your duties did not comprehend any of the work of constructing lines, new construction or even reconstruction of old lines?

A. Yes, that is probably so, except the natural attention and interest that those things would have to an engineer on which he would keep posted in respect to.

Q. I had in mind the actual experience in the work of that character and in the employments you had during those years. There was no actual experience of that kind beyond your experience which resulted from observation, more than actual experience?

A. Yes, that is right. Of course, in bridge work it was really part of railroad work, at the time I was engaged in that; the bridges were built for railroads.

Q. Your next experience was in the Yazoo Delta, in Mississippi in connection with surveys and locations for a line?

A. Yes, sir.

Q. Did that work extend beyond the mere surveys and locations, or did you remain with the Illinois Central in that vinicinity during any of the construction work that went on?

A. No, sir, I had too much respect for my life to remain in that country.

Q. Yes, sir, I should expect that might be true. You went with the Chicago-Alton in 1901, and was later on in charge of and managed the Quincy, Carrollton & Western Railroad; where is that line? I don't know, myself.

A. Why, it is a cross-line that was bought up by the Alton road. It was a small piece of property that was built by farmers through that country and was feeding the Chicago, Burlington & Quincy, and Mr. Harriman bought the property in, and I went down there and took it over and operated it until it was merged into the Alton road.

Q. That was in what state?

A. In Illinois.

Q. About what mileage did it have?

A. About sixty or seventy miles; had interchange relations with all the other lines on business.

Q. You were next transferred to Kansas City where you had charge of the reconstruction of the western division of the Alton road?

A. Yes.

Q. How long were you engaged in that work, and about when and between what periods did it exist?

A. I was engineer of maintenance of way of the western division I think about a year; perhaps a little longer than that.

Q. And at the termination of that period you then went into the employment of the Chicago Great Western?

A. Yes.

Q. At St. Paul?

A. Yes.

Q. How long were you in the employ of that company? I see you state you left its employ in 1902; do you recall how long you were with the Great Western?

A. I think about a year.

Q. And then you went with the Omaha Company in charge of the construction of the new machine shops and terminals at Sioux City?

A. Yes.

Q. You say you remained there until that work was completed, but you have not indicated about how long that was; can you tell now?

A. That work occupied about a year and a half time.

Q. Thereupon you entered into the work of presenting the figures for the Omaha road to the Wisconsin Railroad Commission, showing the value of the lines of the Omaha company in that state?

A. Yes.

Q. And it was in 1904 that you were appointed general superintendent of that company?

A. Assistant to the general superintendent.

Q. Assistant to the general superintendent?

A. Yes.

Q. And for approximately two years you occupied that position?

A. Yes.

Q. Then it was that you went into the employment of the Minnesota Commission?

A. Yes.

Q. And that work took you up until last August?

A. Yes, sir.

Q. In taking up that work, Mr. Morgan, for the Minnesota Commission you prepared and handed out to the different railroads in the State of Minnesota blank forms for

reports to be made by them to you of their physical valuation or their cost of reproduction, did you not?

A. Yes.

Q. You constructed the basis, as shown by those blanks, approximately the same, did you not, as has been shown by Mr. Darling and Mr. Hogeland's exhibits filed in this case, showing the cost of reproduction of the Northern Pacific and Great Northern lines?

A. Yes, substantially the same.

Q. The division of the items is substantially alike?

A. Yes, substantially the same.

Q. And it is your understanding, is it not, that the railroads in this state generally and the engineers in this case followed the division of items and the basis as showing the different items that you suggested and in fact required the railroad to conform to in making their reports for the use of the Minnesota Commission?

A. Yes, that is so.

Q. That is the usual and ordinary basis, is it not, that has been adopted not only in this state but in certain other states, of ascertaining the cost of reproduction of railroads?

A. Yes, I think it is substantiailly the same; in Wisconsin, at least, and in Minnesota.

Q. What other states besides Wisconsin and Minnesota, or what other authorities, have adopted that method of reporting the value of the property, to ascertain the value of the property?

A. I think, perhaps, the State of Michigan was on a similar basis, yes, in fact, it was on a very similar basis.

Q. What were the reasons in your mind as an engineer which led you to adopt that basis for determining the value of the lines in the State of Minnesota?

A. Well, of course I gave the matter considerable thought as to a base, and I don't know that it would be possible for me to assign a reason for getting it up in just that way. It appealed to me as being an intelligent division of the various items, and it conformed very closely to the division of accounts as prescribed by the Interstate Commerce Commission.

Q. Let me state it in another way: The problem which was before the Minnesota Railroad Commission was to appraise the value of the railroad properties in the state, was it not?

A. Yes.

Q. And to ascertain the value of the properties?

A. Exactly.

Q. And in order to ascertain that value you were employed as an engineer to assist the Commission, and you, I take it, adopted, with their approval and consent, the cost of reproduction as a prime factor in determining the value of the property, did you not?

A. Yes.

Q. Was it not your view, and is it not now, that the cost of reproduction thus ascertained afforded probably the most stable basis that can be reasonably devised for systematic and thorough consideration of the problem of physical value?

A. Yes, I believe in it.

Q. Well, do you not believe in it in the language which I have stated?

A. Yes.

Q. I read that language from your report to the Minnesota Commission.

A. Yes, I know you did.

Q. And I want to know if that is now your view as to this question of reproduction cost.

A. Yes, it is, Mr. Holden, but I want you to be entirely fair with me by reading the preface to my report to the Commission, in which I state there that it must be a higher authority than myself which shall decide as to the correctness of my views in respect to certain matters.

Q. Certainly. Now, that would be undoubtedly matters perhaps legal in their nature and which were not presented to you for consideration, but I am speaking now of your view as an engineer, and from the experience which you have had and the study you have given this problem. You came to work with the Minnesota Commission in a problem that they had imposed upon them by law, of appraising the value of the property, and it was your judgment and still is that in meeting that question and solving that problem the cost of reproduction afforded probably the most stable basis that can be reasonably devised for systematic and thorough consideration of the problem of physical value?

A. Yes, I believe that.

Q. You are somewhat familiar with the methods adopted by the Wisconsin Commission, of course, from your connection with the work done there?

A. Yes, sir.

Q. I think it appeared in your examination in the Rate Case in this state that the Wisconsin Commission did not

make a complete and entire examination of the lines of the Omaha Company, for instance, in Wisconsin, by going over them, but only went over a portion of the lines?

A. Yes, that is true.

Q. You expressed it, I think, that they divided the line, or the line had been divided for the purposes of that work into sections, and whether you meant it literally or not I don't know, but figuratively at least by some form of chance they selected one of the sections and determined to go out and physically inspect that section, and that was all of the inspection that was made in that state?

A. Yes.

Q. And that didn't appeal to you as a sufficient examination to enable them to make a full and comprehensive report, did it?

A. Well, I don't think that I said that, Mr. Holden.

Q. No, I don't mean to quote that, but I am asking you now whether that was not your judgment, that merely looking at a fragment of a system would not afford the body exercising the judgment sufficient data to give a reasonably intelligent answer to the question.

A. Well, I think that the more complete the knowledge is of a system that the more intelligent the answer will be. It ought to be.

Q. Well, that would, of course, be true, Mr. Morgan, but it hardly answers the question. Stating the question again as I did before, you would not have undertaken here in the state of Minnesota to have returned your judgment as to the cost of reproduction of the Great Northern lines by only traveling over it and inspecting ten or fifteen per cent. of the mileage of the state, would you?

A. Well, I didn't.

Q. No, I say you didn't do it, and would not have undertaken to have expressed your judgment as an engineer with that kind of a physical examination in front of you, would you?

A. No.

Q. And when you came here, as I think is well understood, you called for a train on each of the different lines and went out and covered substantially all of the mileage of each of the systems in the state?

A. Yes.

Q. Do you recall the number of miles of the Great Northern in Minnesota?

A. I think it is a little over two thousand.

Q. And the total number of miles in the state of Minnesota are about how many?

A. I think there is something over nine thousand miles in the state.

Q. And about how many miles did you actually inspect in your travels over the state?

A. Well, practically all of it. There were some few—

Q. Somewhere between nine and ten thousand miles?

A. There were some few branch lines that I didn't cover.

Q. But you would think it a fair statement, without being exactly accurate, to say you rode over and inspected over nine thousand miles in the state?

A. Well, I think it might be a better statement to say that I probably covered ninety-five per cent. of all of the lines that I reported in the examination.

Q. You were engaged in the work, from one end to the other, in various ways, for approximately three years, were you not?

A. Yes.

Q. The actual time out on the lines, away from the large terminals of St. Paul and Minneapolis, was from some time in May until some time in December?

A. Yes.

Q. Do you recall about how long you were on the Great Northern line?

A. Why, I think it was about twenty or twenty-five days, something like that, going over the line.

Q. You are not clear about that, Mr. Morgan. Wasn't it sixteen days?

A. Well, I don't recall exactly what it was. I might have been less than that; I don't recall what it was.

Q. I simply wanted to make the fact appear clearly. Our records show that you started out on the 18th of November and returned on the 10th of December; would that accord with your recollection?

A. Well, I don't recall the dates, but if that is what your records show, Mr. Holden, it is probably correct.

Q. It is not of very great importance. You adopted, as I understand it, in fixing your unit prices, the average of prices for the year 1905 in making your Minnesota appraisal?

A. Yes.

Q. There was some suggestion made, perhaps, in the negotiations over that subject that an average of prices for five years might have been used?

A. Yes.

Q. And that was resolved adversely to that suggestion because perhaps there had been a considerable advance in prices from say 1892 to 1906?

A. Well, yes, that was one consideration, but the main consideration was the difficulty and the time and labor involved in trying to average up prices through a period of years, going through all the records necessary. Now, taking the prices as I did there, it was assumed that they were approximately average prices. There was no definite statement made that they were exact prices. I think for all practical purposes—

Q. Well, you don't mean that the prices you took as the average of the prices of 1905 would be the average prices for a period of five years, do you?

A. I haven't a copy of my report there. I think it reads in there just what I did.

Q. Yes, I think probably you did make that statement. You say that a review of the prices for the five-year period ending June 30, 1907, enables it to be reasonably assumed that the prices generally prevailing in the year 1905 are in most respects as near the average prices for the five-year period as is practicable for the purposes of this inquiry, but you also say it must be recognized, however, that the cost of labor and materials entering into the construction of railroads have averaged higher since 1902 than any previous period and that no marked recession in prices began until the early part of this year; you mean by that, I take it, the year 1908?

A. Yes.

Q. So it is your judgment that prices after 1902 were noticeably higher than at any previous period in the history of railroad construction in this part of the country?

A. Well, that was for certain classes of railroad material.

Q. What classes?

A. Take the laboring classes on railroads, they are paid more money than they were formerly; and there has been a gradual increase in the cost of ties and timber. I don't think there has been much change in the cost of rails. In fact, a great many years ago, back in 1884 and 1885, I recall that rail was being bought for $17 a ton.

Q. Well that was an exceptionally low price?

A. Well of course it was a very low price.

Q. And it is also a fact that back in early days rails were bought right on the Great Northern road for very much more than the current prices as of recent years?

A. Yes; that is true, and at that time the rails that were

bought at so much per ton at a very much higher price laid a great deal more track.

Q. That, I think, is understood.

A. Yes.

Q. But I am simply trying to deal now with the general facts and the general conditions, that all classes of railroad labor, from the lowest form to the most expert form, and all classes of railroad material, subject to the exception that may exist in the case of rails, more markedly increased after 1902 than during the previous period. That is a fair statement, is it not?

A. I think that is generally true.

Q. And so it would generally be true, if you thought the prices of 1905 were a fair average of the five year period ending June 30, 1907, that the prices of 1906 and 1907 were relatively higher than the prices of 1902, 1903 and 1904, in order that the average of 1905 might reflect your judgment on it?

A. Well, of course, Mr. Holden, it would all depend on circumstances. You could carry that thing along from year to year, and you could carry it through into 1908 and 1909, and you would drop down very rapidly.

Q. I am glad you suggested that. There was a drop in the prices of lumber and materials made of wood which the railroads * * * use, to some extent; in some cases a very marked drop?

A. Yes.

Q. You don't contend that there was any noticeable drop, however, in those years in the prices of labor on the railroads, do you?

A. No, I think not.

Q. That is what I had in mind. And the reduction in the prices of lumber which came through the panic in the fall of 1907, are already beginning to show signs—have already shown signs of being done away with by considerable advances in those prices, have they not?

A. I haven't examined that question, Mr. Holden.

Q. You haven't explained that question. Your judgment as to the prices which you made use of in the Minnesota case, and which I take it, you have largely used in your own mind in the testimony here, so far as you have gone into that subject, was largely made up, was it not, of reports made to you by assistants that you had and whom you had make inquiries and brings you reports; is that not so?

A. Yes; of course I had the data from various sources as to prices.

Q. The data was all brought to you by the inquiries you had your assistants make?

A. Yes, and inquiries I made myself.

Q. Your work was very largely at headquarters, was it not, and it was largely in connection with directing a force that was in the field and receiving from them and regulating the reports that they brought in to you? You didn't have time or opportunity to go out into the field and make these examinations and investigations in prices yourself, did you?

A. No, only in so far as my experience and judgment would carry me in those matters.

Q. Exactly.

A. Of course, I made some personal investigations—a good many.

Q. You have not dealt, in this case, to any great extent with the question of land values, except that in your exhibit relating to the Great Northern system you have shown $21,956,436 as an approximate original cost of the entire right-of-way, station and terminal grounds of that system?

A. Yes.

Q. I don't know whether I understood the question correctly or not, but I so understood it that you were asked whether in your opinion that would be a fair figure to attribute to the cost of the Great Northern lines; did you express yourself on that subject, as having an opinion on that subject?

A. I thought that it would, yes.

Q. Well, you have no knowledge from any investigation outside of the state of Minnesota on that subject?

A. Well, yes, from the exhibit which was put in there showing the original cost of lands and what that amounted to in the reproduction estimate.

Q. And that is the only other source of information, I take it, outside of the state of Minnesota that you have?

A. Yes, practically.

Q. Now, that is your Ex. No. 8 in which you have shown in four columns the area in acres of the Great Northern terminal lands in nine of the larger cities in which it exists, the reproduction cost figures which, I take it, are the figures returned by the railway company—

A. Yes.

Q. In this case?

A. Yes.

Q. And original cost figures in the fourth column?

A. Yes.

Q. Now, to illustrate, you say opposite St. Paul, Minnesota, that there are 354.12 acres in this city of which the railway company has claimed a reproduction cost value of $8,041,686, and you have shown an original cost figure of $1,210,833.37. Now, did I understand that that cost figure covered all of the 354.12 acres?

A. Yes.

Q. And that this exhibit purports to mean that you found from the books of the Great Northern Company that the 354.12 acres in the city of St. Paul cost but $1,210,833?

A. Yes.

Q. Do you recall from what books of the company or records you ascertained and made up that figure?

A. I think that was made up with Mr. Hayden. Mr. Hayden furnished a good many of those figures.

Q. Is it not a fact that if Mr. Hayden did furnish the figures that it was very clearly stated that a great deal of the titles of the Great Northern lands in this city stand upon conveyances where the consideration is only nominal and that there is no record nor knowledge today of what the actual cost of those lands was?

A. I think that is probably so, Mr. Holden.

Q. Now, is it not a fact often—

A. I wanted to say there that all we could do was to take what the records would show.

Q. Precisely. And all I want to make clear is the unfortunate deficiency of the old records of this company, as well as, I take it, of most companies, on original cost matters. So that this figure, while it may be the figure which would come from the records of the company, does to a greater or less extent represent nominal considerations for purchases of land of which there appears to be no present record of the actual amount of money paid?

A. Yes, I think that is so.

Q. And it is impossible to tell how large a percentage of the 354.12 acres rest in that way?

A. Well, of course I can't say now what that proportion is; I don't know that it was possible.

Q. Well, it would be possible, I suppose, to go to the recorder of deeds office and take off all the deeds, but I mean from the exhibit or from your investigation it is not now possible to make the statement?

A. I haven't that in mind, no.

Q. Is it not a fact that in the original method of railroads in purchasing and acquiring their lands they are frequently

compelled to make their purchases under cover, so to speak, to prevent an unwarranted expansion of prices, in the case of private negotiations?

A. Yes, I think that railroad companies endeavor to make purchases of land under cover, but I think that it is very seldom that they are very successful in doing that; that there may be certain pieces of land that can be purchased under cover, but the great majority of it cannot be purchased in that way if it is bought in blocks. Now, I could illustrate that to you in respect to the lands that the Great Northern has been purchasing north of this property between Rice street and Mississippi. They bought individual pieces of property in there. Now, I knew that that was a matter of knowledge—it was a matter of knowledge to me, and yet Mr. Hayden and others when his attention was called to the fact that this property was being bought by the Great Northern, why, he seemed considerably surprised that anybody should know about it.

Q. Somewhat the case of the ostrich, in other words?

A. Yes, a good deal.

Q. What you really mean to say is, Mr. Morgan, and that very well illustrates it, that where a railroad company sets out to purchase a greater or less extent of lands, they possibly can remain under cover for a comparatively short period of time?

A. I think that is so.

Q. And get a few pieces, but sooner or later the activity in that vicinity is noted and the identity of the purchaser is pretty well surmised if not actually known?

A. Yes.

Q. In meeting those sorts of conditions it is a reasonably common habit, is it not, of railroads to conceal the prices actually paid by taking deeds for nominal consideration?

A. Well, I don't think it is except very recently. It may be on some lines. Mr. Cooper testified in the case of the Northern Pacific that where the consideration was not a nominal one it was the actual price paid for the property.

Q. That is at the present time, you mean, or uniformly in their cases?

A. Uniformly in their cases; that where it was not purchased for a nominal consideration the price shown was the actual consideration paid.

Q. You gathered from him that there were more or less frequent cases where in winding up the transaction the consideration was inserted as nominal?

A. Well, I presume there are some; how many, I could not say.

Q. That is indefinite. You have satisfied yourself, and I think you have made it very plain in your report in the Minnesota rate case, that railroads in acquiring lands are, on the average, compelled to pay uniformly higher prices than other persons acquiring similar lands.

A. I don't think there is any question about it.

Q. None whatever. And in endeavoring to arrive at the reasonable average basis which would be reasonably just over a large number of individual cases, you determined and acted on the basis, and I take it would now still assert the reasonableness of it, that in estimating the reproduction cost of lands of a railroad company in this part of the country, or, limiting it to the Great Northern Company, the so-called rural lands outside of the terminals, would cost the railroad companies on the average three times what similar lands would cost private persons?

A. Yes, I think about three times.

Q. And you still think and have no reason to change your view in that regard?

A. Well, that was the result of my investigations in respect to lands that were recently purchased. Now, that condition might not have prevailed, Mr. Holden, earlier during the history of the construction of railways when there was an incentive among the people to have the railroads come.

Q. Oh, undoubtedly it didn't—

A. And therefore, the conditions which might have prevailed earlier are not reflected in what we find now.

Q. Exactly. I think we all would agree with that, that the conditions a number of years ago were quite different than they are now, but dealing with the proposition as a present problem of reproduction under existing conditions you would still maintain that judgment?

A. Oh, I think that is correct.

Q. And in the large cities, such as St. Paul and Minneapolis, and large cities, generally, it would not be fair, from experience, to make use of so high a multiple, and I think it was your judgment in such cities as St. Paul and Minneapolis, that some percentage less than twice would be fair; you determine that according to the methods that you adopted, and it varied in different cities, but that there was an added percentage in the large terminals?

A. Yes, that is true.

Q. And that existed apparently for the same reason?

A. Yes, recent purchases.

Q. That added cost (speaking generally now) arises from what ordinary considerations? such things as severance damages?

A. Yes, the severance damage to property and the natural tendency of the human family to get all they can for a piece of property if it is being sold to a corporation. I don't think it is justifiable, but it is the condition, just the same—they do.

Q. In your consideration of the problem of making an estimate of the cost of reproduction, you did not take into consideration any elements of value which might exist in railroad properties arising out of fortunate location or strategic location in reference to the business it has to handle or the community which it serves, did you? You didn't deal with any such elements of value if those may properly be said to exist?

A. Well, in one way I think I did, Mr. Holden. For example, you take the lands owned by railroads in the city of Duluth which are still submerged under anywheres from an inch of water to perhaps ten or fifteen feet. Now, that property is not available for railroad uses in its present condition, but in making up the valuation on the property as a whole I made no distinction between that which rested under the water and that which rested above, assuming that its availability for railroad purposes was just as great when it was needed and will be brought into use.

Q. That, I think, would be a very fair way of treating land of that character; but if you had to do with a strip of land such as the right-of-way of the Omaha company in front of St. Paul here where there is a very narrow strip between the foot of the bluff and the river, and which is now fully occupied by railroad tracks, or the strips of land that run up through Trout Brook and Phalen Creek here in St. Paul, where there is no other land unoccupied or adjoining those strips which can be reasonably used for railroad purposes, it is not an unfair statement to say, is it, in such cases, those pieces of land have an added value because of their peculiar situation in a railroad sense and their peculiar relation to railroads and the commercial community in a city like St. Paul?

A. Yes, I think they do have, Mr. Holden, an added value. They have a strategic importance; but it is not clear to my mind that that is an element which can be properly taken into account in a reproduction estimate.

Q. That is exactly what I had in mind. In dealing with a

reproduction estimate, you did not seek to report any figures covering those added elements of value which might be argued to exist in cases of that character?

A. No, that was not considered in that way, although the result of my figures on the very properties that you have mentioned were, I think, quite as great as those turned in by the railroad companies.

Q. Perhaps that may argue the ultra-conservativeness of the railroad.

A. Perhaps it does.

Mr. Walter: It has been hitherto apparent.

Q. But you would not deny, Mr. Morgan, from your study of problems of this kind that in determining not alone the cost of reproduction of the property but the problems such as the Minnesota Commission had here of the value of the property, that there it may be very properly said to be elements of value in a property located in such a way as I have illustrated in the case of these roads here in St. Paul on the strips of land referred to?

A. Why, Mr. Holden, if we were to consider the value of the property as a utility, why, it would be very difficult for anyone to criticise perhaps any figures that might be put in on that.

Q. Is that reflected by the statement you made in your report to the Minnesota Commission, which I would like to read to you, I think it is probably what you had in mind: "The cost of reproduction and value as a utility have no necessary or logical relation, and the fact that the terminal lands or the properties, in part or in whole, are not actually to be reproduced, or the fact that it might not be possible at all to reproduce them or their equivalents, probably renders their present possession invaluable, not only to the owners, but to the communities dependent upon the facilities afforded for industrial activity and commercial supremacy?" Now that presents your thought in a concrete way?

A. Yes, sir, it does.

Q. Now, taking a railroad like the Great Northern, for instance, an entire system, as your general knowledge leads you to understand that it exists, if it be said to be a road in practical, efficient operation, and well located in the large cities through which it runs, and serving the public with reasonable satisfaction and enjoying a reasonable and steady flow of business, would you not say that there was in such a system elements of value which were fair to be considered in deter-

mining the value of the property over and above the bare cost of reproducing the physical elements? To make myself plain, I am not dealing now with the legal question (that may be argued by others) as to whether that element of value, if it exists, is proper to be considered, but I am asking you from your study of this problem and as an engineer, whether from that point of view and under that kind of circumstances there are not elements of value in such a system.

A. Why, yes, I certainly do believe that there are elements of value. Whether or not they can ever be reduced to tangible dollar-and-cents shape I can't say.

Q. Then let me ask this question, and that is as far as I care to go on that subject: would it not be your judgment that a railroad system, such as I have described, in full operation, and with a history of a considerable number of years of efficient service to the public is of greater value than a new system presently constructed along the lines of a table showing the mere cost of reproduction.

Mr. Teal: But, Mr. Holden, may I ask you a question there: Is this system you propose a profitable system? Suppose it is losing money?

Mr. Holden: I haven't said anything about its profitableness.

Mr. Teal: I didn't know whether you put it that it was losing money or making money.

Mr. Holden: No, I assume that it is efficiently serving the public and enjoying a reasonable volume and a steady volume of tonnage.

Mr. Walter: Fairly remunerative?

Mr. Holden: Yes, I am not assuming that it is a losing proposition.

Q. Assuming favorable conditions surrounding such a system, would you say that a system of that kind has more value to it than a brand new system put into the same merely physical condition?

A. Well, of course it is quite impossible for me to conceive of relations which would exist between an old line and a new line. We are treating upon a subject here which never has to be done.

Q. You mean the reproduction?

A. The reproduction,—never has to be done.

Q. We hope that is true. But my question deals with a perfectly fair supposition, I think, and I think it is a reasonable question and I would like to have an answer to it.

A. Well, it would not be an answer with parallel cases, Mr.

Holden. Of course, I realize with a railroad that has long been in existence, that has gone through a period of development, of course it has established relations, conditions, and everything else which are valuable to it and make it more valuable than a new road would be without the benefit of many years of effort to produce what you find in the old system.

Q. That I think is the idea I had in mind. Now, Mr. Morgan, I want to direct your attention to the figures you read into the record, I think without an exhibit, relating to the quantities and prices you ascertained from the Great Northern books, of contract work on grading, the prices paid contractors. You found there were 116,951,222 cubic yards of various kinds of material?

A. Yes.

Q. That, I understand, is substantially the equivalent of what is shown in one of the exhibits here as 56 per cent. of the total quantities claimed?

A. I think it is just about that.

Q. Over approximately how many years do you recall or do you know that that contract work was spread?

A. Well, I think we took every record that could be found, Mr. Holden. It covered a great many years.

Q. It is your general information, is it not, that the beginning of the present Great Northern system was somewhere in 1862?

A. Somewheres along there, yes.

Q. And from that time down to the present time, the existing system has been a gradual growth, a gradual extension?

A. Yes.

Q. And so the 116,000,000 and odd cubic yards referred to, to a very large extent, cover in a rough sense at least, all of that intervening period, does it not?

A. Yes, it covers all of the grading quantities we could find.

Q. And a considerable portion of it was done many years ago?

A. Yes.

Q. And it is distributed along, as shown by the records, over the period of first construction in 1862, or thereabouts, down to a recent date?

A. Yes.

Q. Well, I take it, from what you have already said and from your general knowledge, that the contracting prices, prices of labor and all costs of that kind, were considerably lower—much lower—ten, twenty and thirty years ago (of

course varying in various ways) than they have been in the last two or three or four years, have they not?

A. Well, yes, the prices were lower, I think, in earlier years, but, as an offset to that, you must bear in mind that the tools and machinery which were available for conducting work at that time were not the tools and machinery which we find today for doing the work; there are elements of economy that it is possible to introduce today, in the way of steam shovels.

Q. With all of the benefits that may exist by that, is it your assertion that it today costs less per yard to move earth, for instance, than it did in 1870 or 1875?

A. I made no assertion at all.

Q. No, I know you made none; I am asking the question?

A. No.

Q. While they have the machinery today, the wages of the men who run the machines are very much higher than corresponding wages were twenty or thirty years ago, but I don't want to get into a detailed discussion, Mr. Morgan, I simply want to get your opinion or get a statement of the fact that the contract prices that may appear on the books of the company, per yard, of the grading done of any kind in 1865 or 1870 or 1875 or 1880, or any such remote period, would not be, would it, a fair index of what the price should be in a cost of reproduction as of the present time?

A. I simply went into the records, Mr. Holden, and got the information out of that. I have expressed no opinion in respect to what the relative cost would be then and now.

Q. No, I think that is probably a fair statement, but I am bound to assume that the showing of an average price of 27.9 cents per yard has some purpose. Now, if I understand you that you do not claim that that has any relation necessarily to the present prices, why, I think we can pass on to some other subject. I would not assume that you would claim that those average prices of cost over that many years would have any reasonable relation to the fair prices today.

A. I merely presented the facts out of the records of the company, and have made no use of them other than to present them.

Q. Then I would ask you to give your judgment as an engineer, Mr. Morgan, I ask you to give me an answer to that question, whether you think the prices over as long a period as that, and all bunched together, and averaged, without any knowledge, I take it, in your mind of the relative volume

of the work done in relative years or relative periods, would be any fair index of what would be fair prices for grading as of the present time?

A. I wouldn't want to acept it as a base, myself.

Q. And if you were going to undertake a bit of railroad construction, you wouldn't bother your head about what any such average figures were, would you?

A. No, I don't think I would.

Q. Now, you made some deductions that seemed to indicate that from those figures .93 of a cent per yard seem to be the charges for overhaul?

A. That is what the record shows on that.

Q. The record shows, that is, for the overhaul applicable to all of that, 116,000,000 of yards, over all of those years?

A. Yes.

Q. Now, is it not a fact, say prior to the last ten or fifteen years, that in the construction of railroads there were very many more trestles and bridges, temporary wooden bridges put in, than modern construction would dictate, less filling in of embankments and things of that kind?

A. Oh, I think that is so. In the modern methods of construction the roads are more permanently built than they were many years ago.

Q. It would not be an unfair statement, considering the early history of this railway, and the construction of it in the way that has been referred to, that there were a great many temporary wooden bridges and wooden trestles put in during the periods of construction upon different portions of the line, prior to say ten years ago? That was a common method, was it not?

A. Yes, I think that is so.

Q. Would that not necessarily bring about this fact, that there was a much less overhaul in that method of construction than there would be today, where the dirt from a cut is hauled out longer distances to fill in such places, where as in former methods it would be covered over by a trestle?

A. Well of course that would depend upon the nature of the country. There is a great deal of country where bridges are put in where there is no overhaul at all.

Q. Of course, it is very plain that that figure of .93 of a cent is offered here as a contrast to Mr. Hogeland's deduction from his Exhibit 16 where it appears that 2.2 cents is the average cost over the last ten years?

A. Yes.

Q. For overhaul per yard. Now, I want simply to bring

out what I think is a fact, that during such a period as the last ten years there has been a great deal more attention paid to making solid banks, and there have been very many less open places left in the roadbed, there have been a less number of those temporary trestles and culverts and bridges of that kind put into the roadbeds than formerly?

A. I think that is true.

Q. And would that not necessarily bring about the fact that during the last ten years, overhaul would cost more than during the period prior to that time?

A. I have not disputed Mr. Hogeland's figure of 2.2 cents on the last ten years.

Q. Well, that is all right. I want to make clear just exactly what this—

A. I simply brought out in the record what it was on the yardage that showed in the construction work.

Q. I simply wanted to make clear the difference in the character of the construction of railroads in the early days and at the present time. Your Exhibit 11, Mr. Morgan, entitled "Estimated and Actual Cost of Ballasting, Sag-Raising and Bank-Widening," you have taken off from the books of the company figures and quantities for a period from 1903 to 1907. Do I understand that this exhibit and the average figures worked out from it are offered as presenting any basis of reasonable present prices for ballasting, for instance?

A. Presented to show what the cost of ballasting has been according to the charges on the books of the company. Now, I do not say that that would represent a proper charge per yard for ballasting—what that shows, because there are certain items not included in the cost there that I think properly should be included in the cost of ballasting.

Q. Will you enumerate some of those, please?

A. Well, for example, the depreciation of equipment would be one item, and transportation of men and material would be another.

Q. Stripping of ballast pits?

A. The stripping of ballasting pits is included in there, to a certain extent; there are one or two to show the cost of that, and are included so far as it is shown.

Q. Well, pretty generally it is not a portion of these figures, is that not true?

A. How is that?

Q. I say pretty generally on these figures that is not included in these items?

A. That is so, but on the contrary there are shown in that

table certain elements of cost that should be eliminated, because in the reproduction estimate there are included elsewhere; for example, you take that column which shows cost of raising bridges. Now then, if you are going to ballast a line on the theory of reproduction, all of that cost would come out, because you would construct your bridges in such a way that they would be in a position to receive the ballast without additional expense of raising them.

Q. That is but a negligible item, is it not? It is only fourteen thousand and odd dollars out of a grand total of nearly $800,000?

A. Well, there is the item also of engineering which is taken care of elsewhere.

Q. Yes, that is $31,000 total.

A. Yes.

Q. Now, Mr. Morgan, your figures are—and I don't say that reflecting at all upon your method, prboably they were taken right off of our books—but they do include both ballasting and sag-raising?

A. Yes, they do.

Q. In one item?

A. Yes.

Q. And where it appears in the first item which you referred to, Spokane to Crater, Washington, there was a single authority, apparently issued by an executive officer, and it appears there was estimated 158,000 ucbic yards, and the unit price was estimated, and the price was worked out, that included in an intermingled way both elements?

A. Yes.

Q. Ballasting, in a reproduction cost estimate, is one thing, and sag-raising, of course, would not be in such an estimate, but it is a very different thing than ballasting, is it not?

A. I can't say that it is, Mr. Holden, in a general way. It contemplates the use of ballast very largely.

Q. It may contemplate the use of gravel, but you would not say that the same cost per yard would attach to sag-raising or even anything reasonably close to it that would attach to ballasting, would you?

(Witness handed exhibit by Mr. Walter.)

A. It would be a cheaper class of work; there isn't any question about that.

Q. Ballasting is worked out by the use of a much larger material than gravel, is it not, ordinarily? Well, perhaps I am wrong about that in such a general statement, but in

ballasting a track there is a larger element of labor involved than there is in raising sags?

A. Certainly there is, although there is always a considerable element of labor involved in sag-raising, because you have got to raise your track.

Q. Do you raise it in any such way as you do in the raising of a track which results in ballasting?

A. In exactly the same way. The only difference is that you finally fill in your track and finish it.

Q. Don't they make a much bigger lift in sag-raising than they do in ballasting?

A. It all depends upon how much ballast you put in under your track.

Q. I am speaking about normal conditions, the average lift of ballast and the average set of conditions?

A. Of course, you take sag-raising, and there is a certain amount of it that can be bulldozed off with a bulldozing machine, but that which is underneath the track you have got to raise, but you raise it as high as you can. You can't make a lift of more than eight inches usually at one time, and you often do that in ballasting.

Q. When you ballast a track in a normal average way, you have got to tamp very thoroughly, and that takes a good many men and a good deal of time?

A. Yes.

Q. And when you are merely sag-raising, you don't pay anything like that amount of attention to tamping, and you don't need any such amount of men at the work?

A. Yes.

Q. To keep in more or less general lines, the combined cost of ballasting and sag-raising, would not deal with the same subject at all as ballasting in a reproduction estimate?

A. I think if you will look through the records of the chief engineer's estimate on that, that he defines himself what the difference in cost is. Here is president's authority No. 9984 in which the chief engineer's estimate of the sag-raising is 34 cents a cubic yard, and the estimate for ballasting is 32 cents a cubic yard.

Q. That was up here in Minnesota, Deer River and Cass Lake?

A. Yes.

Q. And you show a combined figure of 31½ cents?

A. Yes.

Q. The exhibit shows 31.5 cents. Have you got the estimated number of yards of each class of work there?

A. Yes, it is 15,500 cubic yards of sag-raising and 47,500 cubic yards of ballast.

Q. Now, then, if I understand the method in which this exhibit was prepared, you have added those two quantities together and shown as appears here 66,500 cubic yards, and you have averaged the price, and the price you show on the exhibit, 31.5 is not the price shown on the records of the Great Northern Company, but is an average computed by whoever made up this exhibit?

A. Well, that of course w. the average for both the sag and grade-raising and the ballasting.

Mr. Walter: It so appears on the table.

The Witness: It so appears on the top of it. It is both ballast and sag-raising.

Q. It is both ballast and sag-raising, but it does not appear that there was a separate price on the records of the company for ballasting and a separate price for sag-raising, and of course as the relative quantities of ballasting and the relative quantities of sag-raising would vary, as they do here, to take an average price for both would reflect a very unstable set of conditions as to either?

A. Yes.

Q. In other words, it seems to appear from this exhibit that 31½ cents was the price on the company's books for ballasting and sag-raising; the fact would appear to be that there was a separate price for each?

A. It was a separate price, Mr. Holden.

Q. Yes, I say the fact appears, but it does not appear on the exhibit; and the price as shown on the exhibit is not on the company's books. Of course, I don't know how much difference that would make; it would depend, as I can see, if there was a very small amount of sag-raising and a very large amount of ballasting mingled together in that way, or vice versa, an average price might be a very infirm statement of what the actual fact was, but I will not dwell on that any further. Now, another point I wanted to ask you about: These pieces of work, ballasting and sag-raising, bank-widening, were all done, were they not, on a completed road at actual operation?

A. Yes.

Q. Under those conditions we have a road that has been in operation a greater or less length of time, but what may be

called a matured railroad, and this is a piece of work done with a completed road operating efficiently; that is true?

A. Supposed to be, yes.

Q. Now, that is a very different state of facts, is it not, and would reflect itself in the cost in a different way, would it not, between ballasting a new road during the construction period?

A. It shows on the face of it that it is.

Q. Exactly, it shows on the face of it, but I wanted to make it clear. Would it not be a fact that the ballasting and sag-raising under those conditions on the completed road, in efficient operation, would be much less expensive than ballasting a new road and during the construction period?

A. Yes, that is true.

Mr. Walter: Would be less expensive?

The Witness: Would be less expensive, yes.

Mr. Walter: On the completed road?

The Witness: On the completed road; it shows on the face of that statement there that it is.

Q. There is no question about that, but I want our friends, like Mr. Walter here, to be perfectly clear in his understanding just what the facts are.

Mr. Walter: I was under the impression that to do ballasting while you were operating trains would cost more per cubic yard.

The Witness: It all depends upon circumstances. There are pieces of road where it would cost very much more.

Q. One other point in that connection: You have already stated that you had no criticisms to make upon the accuracy of exhibits 16, 18 and 19 as corrected?

A. Well, according to the books of the company.

Q. Yes, the accuracy of them?

A. Yes, according to the reords of the company.

Q. Now, in reference to Exhibit 18 corrected, which deals with the actual cost of ballasting, the transportation charges which have been the subject of some of your testimony, are a very inconsiderable item in the case of ballasting, are they not, and that is ordinarily true?

A. Well, I don't recall.

Q. The exhibit shows that of a total of $1,375,232 for all of the different pieces of work, only $125,265 was involved in the transportation charges, and that of the average price of 66.7 cents per yard shown at the end of the exhibit in the last column, the transportation charges have only figured in at 6.1 cents per yard. What I had more in mind was that ordi-

narily in the cost of ballasting, the transportation cost is one of the lesser items and is less proportionately to the whole than it is in some of the other classes of work.

A. Well, of course, the transportation charges, Mr. Holden, have been apportioned to ballasting from the complete records of the company, a certain proportion has been assigned. Now, of course, the transportation charges on some of these lines are very heavy, as we have shown in that statement there.

Q. Dealing with the line Columbia Falls to Rexford, the transportation charge there seems to be 15 cents per yard. Now, just where is that, do you know?

A. Columbia Falls to Rexford?

Q. Yes?

A. It is out in the western part of the country.

Q. As a matter of fact, it is away up in the upper stories of the Rocky mountains, is it not?

A. It is up in the mountainous region.

Q. It is up in the highlands up there and where there isn't much of anything or anybody?

A. Yes, that is probably so.

Q. Now, in the construction of a piece of road out there, as was done by the Great Northern (in 1902 this construction was, I think we will probably ascertain the date) the item of transportation would be a very large expense, would it not, both because of the long distance which men would have to be brought and also the long distances that material and supplies would have to be brought?

A. Yes.

Q. Much larger in proportion per yard or any other unit than it would be in places like North Dakota and the State of Washington, near the central sources of supply?

A. Yes, I think that is true.

Q. That is a very sparsely settled country up there, isn't it, and there is practically no population even today, and naturally speaking, the cost of transportation, and, in fact, published rates are very much higher in a territory of that kind than they are where there is a heavy volume of tonnage and lots of people and easy grades; that is true?

A. Oh, yes.

Q. Do you know whether that line, the Columbia to Rexford, was built by the Great Northern at all or not, or whether it was built by a separate corporation?

A. The probability is it was built by the separate corporation. A great many of them have been built by a separate corporation.

Q. A great many of the lines of the Great Northern Company were built by absolutely outside and independent companies, and others were built by companies organized separately, perhaps, in the interest of the Great Northern, but still separate, independent corporations?

A. Yes.

Q. You ascertained that fact in your investigations in this case?

A. Yes.

Q. Now then, of course, laying aside the question of whether the charge of tariff rates is charging more than might be desirable, you would not assert for a moment that if the Great Northern Company were hauling material for a separate corporation, whether it be a subsidiary corporation or whether it be the Milwaukee & St. Paul road, that it could lawfully charge any less than tariff rates, would you?

A. No.

Q. So, if this Columbia Falls to Rexford line was built by a separate company, the application of tariff rates, whatever they were, was of course the only lawful method the company could show any charges on its books.

Mr. Walter: That is purely a question of law.

A. I think that is so. I don't question that at all.

Mr. Holden: That construction was wholly by a diffeernt company, and we would be the last ones, in the presence of our friends from the Interstate Commerce Commission, to suggest that we would be charging less than tariff rates to anybody.

Q. Now, the line Curlew to Midway, do you know where that is, Mr. Morgan?

A. That is in the State of Washington.

Q. And the Great Northern passes another very high mountain region, and under very difficult engineering conditions?

A. Yes.

Q. Through the Cascade mountains?

A. Yes.

Q. Did you ascertain whether that piece of line was not built by a separate company?

A. I think probably it was. Nearly all of the branch lines of the Northern Pacific—a great many of them—have been built in that way.

Mr. Teal: You have said the Northern Pacific; you mean the Great Northern?

Q. You meant the Great Northern?

A. The Great Northern, yes.

Q. While the charging of tariff rates may be from an economic point of view a subject of discussion, in view of the regulations and law on the subject you have no criticism of the Great Northern Company for making such a charge on the books?

A. Of course, I could not advocate the Great Northern's doing an unlawful act, but as related to reproduction where the property is all brought together under one, it might be different.

Q. That brings up the point we have had all along, and I think it was reflected in your statement a moment ago, that the cost of ballasting a completed road which has been in operation for some time is less expensive than the cost of ballasting of a new road in the period of construction?

A. Not altogether. I qualified that statement afterwards.

Q. I didn't hear the qualification, but if you desire to state specifically the qualification, you may, but I am simply dealing with general lines?

A. Of course, I feel this way, that where ballasting is done under the stress of very heavy traffic, as much of it is done, the cost of the ballasting increases very greatly.

Q. Yes, that is true; we will agree with that; but if it be not done under the stress of heavy traffic, but under average and normal conditions where the line is easily within its capacity, then, in those cases, the ordinary cost would be less than the cost per yard during construction period?

A. That is all shown on that statement.

Q. What I wanted to ask you was: dealing with the subject from a general point of view, whether the moving of men and materials, supplies and outfits, over a line under construction, would not ordinarily be more expensive and costly to the railroad than moving the same kind of traffic over a completed line which has been in operation for a considerable period of time?

A. Oh, that would probably be true, Mr. Holden; I think that is right.

Q. So that a rate, a tariff rate, adjusted on a reasonable basis to a going road, that has arrived at an efficient operating condition, and assume to only return a reasonable profit for the service rendered, might not cover the entire cost of moving the traffic on a road under construction, might it not?

A. Well, that might be true in some cases. Of course, the proposition of charges of 6/10 of a cent per ton a mile is an arbitrary construction rate, and it does not mean that all material moving under those rates cost equally 6/10 of a cent per

ton per mile, because some of it would cost less and some of it would cost more, and the great bulk of the tonnage would probably cost less than that; for example, the transportation of the rails and the ties, the switch ties and items of that kind, which move under a very low classification; that constitutes the bulk of the tonnage. So that getting a construction charge of 6/10 of a cent per ton per mile is not done upon the theory that it would all be equal in cost. Some would be more and some would be less.

Q. Yes, it necessarily must represent an average?

A. Yes.

Q. And it is approximately the average judgment as to what would be required on the average to cover the cost of conducting the transportation; is that not a fair statement?

A. Yes, that is all right.

Q. Now, one other question: In your conception of figuring out a cost of reproduction, is it your idea that after the track-laying the ballasting would immediately follow without any surfacing of track?

A. No, there would be a certain amount of surfacing of track to put it in suitable shape to move your construction train over the line. They always do that.

Q. Of course, you could not really move anything over the line except under very bad conditions, unless the track were held in place by enough surfacing to accomplish the result of keeping it in line?

A. Yes.

Q. I understood you to state in your direct examination something to the effect that in this problem of reproducing a line which is now ballasted that the ballasting would immediately follow the track-laying and that there was no room for an item of charge for surfacing?

A. Oh, no.

Q. I misunderstood you, perhaps?

A. You misunderstood me, Mr. Holden, because my estimate on the cost of track-laying would cover construction and surfacing.

Q. Do you know what has been the actual practice and the actual fact in the matter of surfacing track, for instance, of the Milwaukee & St. Paul road that was recently built to the coast, or the Great Northern road when it built its Pacific Coast extension, whether it was fully surfaced, and also whether it was ballasted as soon as the ballasting could be done?

A. I do not.

Q. You are not advised even as to the Milwaukee road?

A. No, I am not.

Mr. Walter: In a reproduced road, do you use it a while before you ballast it?

Mr. Holden: Well, you can't use it at all unless you surface the track; you can't move over it.

Mr. Walter: How do you build the new road?

Mr. Holden: I wouldn't know how.

Q. Mr. Morgan, one other question: You read into the record a computation in reference to the average cost per ton mile on the Columbia Falls to Rexford line, of 3.4 cents; that computation, or at least, the computation of the ton mile was made by some of your assistants in this recent investigation?

A. Yes, sir.

Q. And you have the figures, I take it, which could be accessible to us, to be re-examined?

A. Yes.

Q. I want to say that it seems to us utterly impossible that that could be true, but of course I do not assert that it is not, and we would like to have you turn over to us the computations; otherwise we would have to go through all the waybills.

A. I would be very glad to do that.

Q. We would like the privilege of checking that, and if at the time we next meet in this case we have been able to accomplish that I would like perhaps to file an exhibit or statement of some kind; it will not involve any extended testimony.

By Mr. Donnelly:

Q. Mr. Morgan, taking the first item on your list, the Morgan Exhibit No. 3, that of engineering, 3 per cent.: I understand you allow that to be fair?

A. I think it is a fair percentage.

Q. The next item, right-of-way, station grounds and terminals: You have not assumed to fix what it would cost at the present time to acquire any of those properties?

A. No, that is an estimate of the original cost—the proximate original cost of the lands, which was prepared at request of counsel.

Q. And the exhibit filed in connection with that, purporting to show what the original cost of certain properties actually was, is open to the same criticism that

implied in Mr. Holden's question regarding a corresponding exhibit of the Great Northern?

A. Yes, sir.

Q. That is to say, that the totals as there shown, include in many instances simply the nominal considerations as shown in deeds for pieces of property where the actual consideration does not appear?

A. Yes, that is correct.

Q. That is true as well of the Great Northern?

A. Yes.

Q. In that exhibit you have spoken of a large quantity of the right-of-way of the Northern Pacific being donated, and you also speak of a large quantity of terminal properties of the Northern Pacific having been donated; and you do not apparently consider that anything was paid by the Northern Pacific for any of those properties, you treat them as having been a gift to the company?

A. Yes, that is right.

Q. Are you at all familiar with the original act incorporating the Northern Pacific Railway Company and giving to it its grant of right-of-way, and of lands on either side of the track?

A. No, I am not.

Q. Well, you understand, do you not, Mr. Morgan, that it has been a condition of these grants to all of the companies that there should be an actual construction of railroad by the individual incorporators to whom the grant was made?

A. Yes, I understand that is true.

Q. And that in point of fact, as regards the Northern Pacific Railroad Company itself, the original incorporators of that property were practically pauperized in the attempt to carry the project through, notwithstanding this munificent grant; do you understand that?

A. They might have been better off if they had not tried it.

Q. And do you know that it is a fact, in addition to that, in addition to the fact that the property has gone through two receiverships, that the government is at the present time actually receiving an additional consideration for the grant in the way of reduced freight rates for the property that is carried over it? That is true of all of these land-grant roads, is it not?

A. I think it is; that is my recollection.

Mr. Holden: It is a continuing—

Mr. Donnelly: A continuing obligation.

Mr. Walter: Why can't you produce that?

Mr. Donnelly: There is no occasion of producing it because it is a part of the law of the land.

Mr. Walter: Then why testify to it?

Mr. Donnelly: I simply want to call attention to it. You are treating it as being an actual gift.

The Master: This is proper cross-examination.

Mr. Donnelly: Certainly.

Mr. Walter: All the testimony showed that this land was donated by the government in consideration that they would build this line of railway. Now, if there is anything about the government getting reduced freight rates, that can be shown without in any wise putting in in in this form. That is the only objection I am making.

Mr. Donnelly: It is a part of the law.

Mr. Walter: Then what is the use of examining about it?

Mr. Donnelly: Because I want to accentuate it and bring it out in relief, in view of your statement that it is a gift. It is nothing of the kind.

The Witness: That statement was prepared by Mr. Cooper, the land commissioner.

Mr. Donnelly: That is, a statement of the cash actually paid?

The Witness: No, the statement you have in front of you there.

Mr. Walter: The land donated?

Mr. Donnelly: Yes.

Mr. Dillard: It is a donation in a sense.

Mr. Donnelly: Now, whether it was a good contract or a bad one for the government, it was a quid pro quo given by them.

Mr. Walter: We will argue that later.

Q. Taking the item of clearing, Mr. Morgan, you have expressed your judgment that $50 an acre would be a reasonable amount to allow for that?

A. Yes, I think it would.

Q. Upon what is that judgment based?

A. Well, it is based upon a knowledge of the clearing in Minnesota, for one thing, and it is based upon the researches which I made covering the Great Northern which runs through a similar territory.

Q. Of course the clearing in Minnesota would not be anywhere near so expensive as it would be in Washington, would it?

A. Not at the present time it would not, although in the

early days the clearing in Minnesota was very heavy on certain parts of the Northern Pacific line.

Q. Are you acquainted with the conditions there in western Washington, on the western slope of the Cascade mountains and down through the Gray's Harbor country?

A. Not particularly, no. I know the timber is very heavy and very long.

Q. And the figures that you got from an examination of a large acreage of the Great Northern shows, I think, an average of about $44 contract price paid by that company for its clearing over the entire system?

A. About $43.

Q. That, of course, would not represent the entire actual cost to which the company would be subjected in connection with the clearing?

A. Possibly not.

Q. There would be some additions to be made for that, and you have actually allowed for them in your fifty-dollar figure?

A. Well, I thought fifty dollars would cover it.

Q. Of course, the actual contract prices paid by the Great Northern for its clearing, say in western Washington, along in the '90s, when it started its road, would not be a fair test of what either company would be obliged to pay at the present time, would it, for clearing in that state, for example?

A. Possibly not entirely in itself.

Q. Have you any notion, Mr. Morgan, as to the proportion of the Great Northern road that runs through the prairies, as compared with the amount of the Northern Pacific that runs through a very different character of country?

A. No, I have not changed the acreage in either case.

Q. No, but you have assumed that prices paid for the clearing on the Great Northern were fairly representative of what it would cost to do corresponding work on the Northern Pacific?

A. Yes.

Q. That, of course, would not be true if in point of fact the Great Northern ran across much more prairie country than did the Northern Pacific, would it,—the averages that you get?

A Well, if you get average per mile, it would not, no; the averages per acre, according to the number of acres, there might be a relation and I believe there would be.

Q. If, for example, the Great Northern ran across the Northern part of Montana where the country was practically

untimbered, and the Northern Pacific running through the southern part of Montana, we will say for the purposes of illustration, ran across country that was comparatively heavy timber, and both of them had the same acreage for right-of-way purposes, you would not say that the amount which the Great Nortern was shown to have paid for clearing across the State of Montana should be taken as a fair index of what it would cost the Northern Pacific for clearing across the state?

A. Oh, there would be differences, of course.

Q. Do you know as an actual fact whether the country penetrated by the Northern Pacific is more or less heavily timbered than the Great Northern?

A. I cannot say.

Q. The actual prices paid in recent years for clearing are very considerably in excess of $50 an acre; that is, in that western country?

A. Oh, yes, I think some of it is very much higher than that.

Q. Now, taking the item of ties, you assume, as your base prices for the Northern Pacific, the figure of 44 per cent., which is shown to have been the average price paid during the year 1908?

A. Yes.

Mr. Holden: 44 cents?

Mr. Donnelly: 44 cents.

Q. And to that you add two cents for loading and handling and a cent and a half for peeling?

A. Yes.

Q. Making your base price about 47-1/2 cents as against a price of the Northern Pacific of 55 cents; is that correct?

A. I think that is about right, yes.

Q. Then the main difference between your prices and those of the Northern Pacific for ties lies in the matter of transportation, does it not?

A. Yes.

Q. You have assumed six mills per ton-mile?

A. Yes.

Q. Whereas the Northern Pacific has assumed tariff rates. And in assuming six mills per ton mile you have assumed, applying the formula suggested by the Interstate Commerce Commission for the determination of the cost of moving freight, that is, by assuming that the passenger cost bore a particular relation to the freight cost—you have assumed, I

say, that six mills per ton-mile would fairly cover the cost to the company of moving the ties?

A. Well, I have not, as I stated this morning, assumed any refinements in respect to the percentage of operating expenses as between passenger and freight. I have taken the average of the two, assuming that they bear relatively the same. I am not undertaking to go into the refinments of it.

Q. No, but getting at it in that way, you figure that would cover the cost of moving it?

A. I figure that the cost of moving would be less than that, but that represents a fair average allowance to make.

Q. Well, didn't you say this morning that it was in applying that formula that was suggested by the Interstate Commerce Commission for determining the cost of moving traffic that you arrived at that figure as representing what it would cost to move it?

A. No, I said this, Mr. Donnelly: that the average revenue per ton per mile on the Northern Pacific is approximately 8-1/2 mills, and assuming that the relation of cost between passenger and freight was the same, that 55 per cent. representing the operating cost would produce a cost of 4.6 mills, but that I had allowed as an average .6 of a cent per ton-mile because some of the transportation charges would perhaps be higher and perhaps some would be lower, but I took that as an average.

Q. That would be as an average?

A. Yes; not as an average cost, but as an average allowance.

Q. Oh. Then of course in taking as the basis of your figures the present revenue per ton-mile of the Northern Pacific, you assume that you have an actually constructed and operated road; the Northern Pacific present revenue per ton-mile, for example, of 8-1/2 mills is the revenue that is received on a railroad that has been in operation for a long period of time?

A. Yes.

Q. It would hardly be fair, would it, to assume that the cost would be anywhere near as light on a railroad actually under construction and not turned over to the operating department?

A. The elements of cost which would necessarily enter into the handling of heavy commodities of this kind would be less than would be the average cost of taking care of the business.

Q. That is true.

A. Because you avoid all the terminal charges and you handle it in carload lots, and in that way I have tried to justify the 6/10 as an allowance.

Q. But to come right down to the general question that I have asked you, Mr. Morgan, it is true, is it not, that the cost of moving freight of any kind over a railroad under construction and not turned over to the operating department is much greater than it is in hauling it over a road perfectly equipped and in operation?

A. Well, I wouldn't want to say that it would be much greater.

Q. Well, it certainly is greater?

A. I believe that it is greater.

Q. And you have assumed this six mills, which is considered less than the tariff rate, notwithstanding the railroad might in actual experience desire to make use of another railroad for the purpose of transporting its materials, ties and rails, to the places where they were to be laid?

A. Well, I think the six mills is intended—at least I intended it generally to cover transportation over foreign lines to a certain extent, as well as transportation over its own.

Q. You would not undertake to say that six mills per ton per mile would cover the tariff charges over another line, would you?

A. It might not on some of the commodities, and on some it might more than cover it. For example, take the rate on rails from Chicago to St. Paul, the tariff rate on that is only about four and a fraction mills per ton per mile.

Q. The existing tariff rate?

A. The last that I examined it, yes.

Q. You mean a special tariff rate that was made for the purpose of moving that traffic?

A. I think it is the regular rate that is in.

Q. Well, it was a rate made for the purpose of moving the Milwaukee material, was it not?

A. No, it wasn't for moving the Milwaukee material. It is a rate that I think is used by all of the lines. In fact, they all came together on the same basis.

Q. Unquestionably all of the rates would be available to any individual who sought to move material under them, but it is customary, or at least it is done in some instances, isn't it, when a new railroad is under construction? It is not an

unusual practice for special tariffs to be put into effect for the purpose of moving the material of that line?

A. Yes, I think that is true.

Q. And it is of those tariffs you were speaking when you say the ton per mile rate?

A. Yes.

Q. Now, the difference between the amounts which you have allowed for rails and frogs and switches and track fastenings, and the amounts allowed in Mr. Darling's original exhibit, are all traceable to those differences in transportation?

A. Yes; I have not changed the quantities.

Q. Coming to the item of ballast, you allow for that 50 cents a yard?

A. Yes.

Q. Mr. Darling allows 66 cents?

A. Yes.

Q. And you justify the reduction of the figure as given by him, as I understood you this morning, upon the theory that for the construction of so large an amount of railroad as would be involved in the reproduction of a road like the Northern Pacific the cost per yard of ballasting would be considerably less than in the construction of short pieces of track?

A. I believe that would be true, yes.

Q. You assume that the ballasting would be done by contractors, do you?

A. Well, I hadn't assumed that it would be done either by the contractor—especially by a contractor or by the railroads; just simply undertook to get at what I believed to be a fair price for doing the work irrespective of who did it.

Q. As a matter of actual experience in the construction of railroads, Mr. Morgan, do contractors make lower prices for the construction, say, of 300 miles of railroad than they do of 150? Are their unit prices less?

A. That would be a difficult question to answer.

Q. Well, as a matter of general experience, so far as your observation goes?

A. Of course, I think that contractors would make a less price, for the reason that they would be justified in making a less price because the expense of getting their outfit in there would be better taken care of on a large contract than on a small one. You take and let a contract for a given piece of work, and you get units of price for doing various pieces of work which you could not get if they were separated one from the other.

Q. You would not expect a single contractor, for example, to reproduce the Northern Pacific system?

A. Hadn't thought of it, no; in fact, I hadn't thought about reproducing the Northern Pacific at all.

Q. You would expect that a large number of contractors would be engaged on that work, if any such work were to be undertaken, wouldn't you?

A. Yes.

Q. If it were feasible at all?

A. Yes, they would necessarily.

Q. And what would you consider a fairly large piece of work for a single contractor to undertake?

A. Well, that would of course depend on circumstances. A single contractor might take five or six hundred miles of line, perhaps more than that. If such a proposition were put up to be actually done, I don't think you would find a bit of difficulty in finding plenty of men in the United States to take the whole contract. That is the American spirit.

Q. But the contractor who took the original contract would himself subdivide it, wouldn't he?

A. Yes.

Q. That is, he would divide it up to a large number of subcontractors?

A. Yes.

Q. And the actual segment of track that would be under the supervision of a given individual for the construction of it would be much less than two hundred miles, would it not?

A. Yes.

Q. So that you would say that one hundred or at least two hundred miles would be a considerable stretch of railroad?

A. Yes, it is.

Q. For a contractor to be at work upon?

A. Yes.

Q. Now, then, if in point of fact the actual figures submitted by Mr. Darling show, and as I understand no criticism has been made and no errors have been detected by you in the exhibits introduced by him showing actual prices paid for work done in recent years,—if they show that the actual prices paid during the last five or six years on a stretch of track two hundred miles in length was 84 cents a yard for ballasting, wouldn't you consider that your 50 cents a yard was comparatively low?

A. Yes, I would; I would in respect to that particular line.

Q. Well, that would be a large piece of railroad?

A. Yes.

Q. Now, the item of contingencies, upon which Mr. Darling has allowed ten per cent. on the thirty-two items that precede on his exhibit, you have cut that allowance to five per cent.?

A. Yes.

Q. And the grounds upon which you have done that, as I understand it, are that you assume that these mythical reconstructors of this railroad start with the actual knowledge in their possession of all of the difficulties that were encountered by the original constructors of it during the course of the work?

A. Well, of course not all of them, Mr. Donnelly, but part of them.

Q. Well, you assume, at any rate, that these men who start to reconstruct it have, as an asset, when they start out already in their possession a knowledge of certain conditions that they are going to encounter, which the original constructors did not have because, it had never previously been constructed, and therefore you argue that a portion of the contingency charges should be eliminated because they are not contingency charges, being already known; isn't that true?

A. That is the idea, yes.

Q. And of course, that could not apply to any of those things that simply occur from time to time as the work would be carried on, whether it was work of reconstruction or work of original construction? It could not apply, for example, to such items as strikes or storms or such floods as have wiped out all of the grading done by the Northern Pacific in the Hellgate Canon in Montana, two years ago, could it?

A. No.

Q. And as a matter of actual practice, whereas it is the practice for engineers to allow ten per cent. for contingencies, they do very frequently run up much higher than that, don't they, sometimes to 50 and 75 per cent.?

A. The contingencies actually run?

Q. Yes.

A. Yes, sometimes they run higher, and a good many times the ultimate cost of the work is considerable less than the estimated cost.

Q. But so far as the actual estimates of work done here in recent years in Minnesota, for example, and as they have been put in evidence in this case, are you at all familiar with

the estimates that have been submitted at the request of the counsel on the other side?

A. No, I have not examined them.

Q. Now, I have not understood that you have assumed to say, Mr. Morgan, what would be a fair rate of interest charge?

A. No, I have not.

Q. You simply stated what the average rate of interest now paid by the Northern Pacific was upon the interest-bearing securities outstanding against the property?

A. That was all.

Q. Well, you would not say, would you, Mr. Morgan, that the rate of interest paid by an actually going concern upon a property which had for years been in existence, was anything like a fair measure of what the original constructors of a railroad property would have to pay for money to build a railroad not as yet in existence?

A. No.

Q. Now, you also stated that it was your judgment that the Northern Pacific Railroad, as it stands today, could be built in eight years.

A. Yes, that was my judgment.

Q. That is to say, the 2819 miles of main line, 2945 miles of branches, 270 miles of second track, 354 miles of spurs, and 1761 miles of yards and sidings, or a total of 8,151 miles, with all of their appurtenances, shops and everything about the system as it stands today, could be reproduced in eight years?

A. Yes, I think it could.

Q. Do you know of any instance in the history of the country of a railroad of any considerable magnitude being reproduced in as quick time as that? Relatively, I mean?

A. No, I do not.

Mr. Teal: Did you ever hear of any railroad being reproduced at all?

The Witness: No.

Q. Take for example the Milwaukee. Do you know the length of the coast extension of that road?

A. I think it is about 1400 miles.

Q. How long have they been in the construction of that road?

A. They were, I believe, just about three years from the time they commenced their surveys until they connected their rails.

Q. They have been at work upon it right along, have they not?

A. Oh, yes, they are working on it yet.

Q. And the Milwaukee coast extension as it stands today is not comparable, as regards its appurtenances, its shops and its depots and facilities of that kind, with a system like the Northern Pacific?

A. Probably not. I have not seen it of course; I have not been over the line.

Q. Or the condition of its road-bed, that would be your own natural inference at any rate, would it not?

A. Yes.

Q. Do you remember when the construction of that was begun, or the commencement of its surveys was begun?

A. I think it was inNovember, 1906, and completed through about the 15th of April, I believe, 1909.

Q You would not assume to say that it was not begun in October, 1905, would you,—the actual work of surveying for the coast extension?

A. Possibly it might have been, at different points.

Mr. Holden: We were speaking about it yesterday. We have a statement from the Milwaukee people that went into the Minnesota rate case on that subject.

Mr. Teal: I don't think any of this has anything to do with the reasonableness of rates.

Mr. Donnelly: As Mr. Walter says, we will argue that later on.

Q. Well, that has been generally regarded and spoken of all over the country as an instance of very remarkable railroad construction, hasn't it, Mr. Morgan?

A. Yes, it has been a good piece of construction.

Q. And if it has taken four years—

Mr. Walter: He said three years.

Mr. Donnelly: But I am assuming now the correct date is the date I have stated, and he is not certain that it is not true—October, 1905, to the present time—to put those 1400 miles of railroad in a condition less complete than was the corresponding mileage of the Northern Pacific. Would you still think that in twice that time the entire Northern Pacific system in its present state could be reproduced?

A. The conditions are entirely different with respect to the Milwaukee as compared with the Northern Pacific. The Milwaukee is building a main stem. Now when you get your main stem in, the lateral lines which you work out to create your system will grow much more rapidly.

Q. Very true, but you would have a main stem of the Northern Pacific nearly twice as long to build, wouldn't you, with all of the laterals besides?

A. I don't think twice as long.

Q. How?

A. Perhaps about twice as long.

Q. Now, you also stated that it was your judgment that the interest on the total cost of reproduction ought not to be computed for more than half the time. My judgment was that that would be a fair base to assume.

Q. In the construction of any railroad, one of the first concerns of the builders would be to insure their terminals, wouldn't it? They wouldn't want a railroad unless they knew they had points between which it was to run, that they had secured?

A. Yes, that might be true, although it would not be necessary to buy all the terminals at once. All you need is something to start with. Terminals never have been bought that way. Terminals are the result of years and years and years of purchases—gradual acquisition of the property and enlargement to meet the needs.

Q. Yes, undoubtedly they are and the existing terminals, say of the Northern Pacific, are the accumulations of years, but this entire thing is to be done in the period of twelve years, according to Mr. Darling's estimate, and eight years according to your own?

A. Yes.

Q. So that there would be some occasion for expedition in the matter of acquiring them wouldn't there?

A. Yes, there isn't any question about that, in the eighth year period, but that need not advance more rapidly than some other things. You would really have practically, for a large part of the terminals at least, a considerable length of time in which to purchase them.

Q. You would have a considerable time within which to purchase them?

A. Yes, within the whole period.

Q. But generally speaking it would be one of the first things that would need to be done?

A. Well, I should say that you would want to start on the purchase of terminals, if we can theorize on this proposition—it seems impossible to me—

Q. Well, of course it is largely theory from any standpoint, isn't it?

A. It is all theory, from every point.

Q. And it is theory from the standpoint of your own estimated cost of reproduction here in Minnesota, necessarily so, isn't it?

A. Yes.

Q. So that you are bound to theorize on it, and theorizing upon the assumption that the entire property is to be reproduced in as short a period of time as possible, you would say that it was important to insure at as early a date as practicable your terminal properties and your right of way over which the road was to be built?

A. Yes, I think I would begin to get options on it right away if I were going to do it.

Q. And the longer you delayed, the more it would cost you to get them?

A. Yes—unless you can keep under cover as the railroads are claiming they can.

Q. And as you say they can't.

Mr. Dillard: We haven't been able to do it.

Q. Now, of course your interest upon that item would be outstanding all of the time, wouldn't it? You would be subjected to an interest charge for the terminal item all the way through, right from the start?

A. Well, I presume that is so, if you want to buy all of your right of way.

Q. You say that would be the most expedient way to proceed?

A. No, I said I thought I would begin right away.

Q. As a matter of fact, the longer you postpone the acquisition of them the more the price would go up?

A. Well, I presume that is so, if it is to be regarded in the light of actual purchases of property.

Q. Speaking about the ballast in Minnesota, Mr. Morgan, you stated that some of the branch lines were not ballasted at all.

A. Yes.

Q. Some of them are in fact more heavily ballasted than the average ballast shown in the exhibit of Mr. Darling, are they not?

A. Well, of course that is undoubtedly true; that from time to time there has been ballast put on a line, it has worn itself out, worn itself into the solidification of the road. Three thousand yards of ballast per mile is a very liberal allowance for ballast.

Q. How many yards?

A. Three thousand yards. I think that is what Mr. Darling has used on his main lines, and half of that, I think, on branches.

Q. You would not undertake to say that there were not considerable stretches of both main line and branch lines in which the actual amount of ballasting was in excess of the average amount shown in his exhibit, would you?

A. No, I couldn't say that.

Q. As a matter of fact, do you not know that there are in Minnesota considerable stretches of main line and track where there is an excess of three thousand yards? Have you made any examination of that?

A. I presume that is so, although I do not recall any. I presume that it is natural that there would be more, but it has worked its way into the roadbed and probably does not show.

Q. I do not understand you claim, then, that the amount of ballasting as shown in Mr. Darling's exhibit is excessive.

A. I have not changed the figures or the quantities at all.

Q. Taking the item of track laying and surfacing: you figure that a reasonable amount per mile of track would be $700 as against $900 shown in Mr. Darling's exhibit.

A. Yes, that is right.

Q. And you justify that reduction, as I remember it, by a statement that the facilities for track laying had so far improved in recent years as to make it reasonable to suppose that it can be done for that figure.

A. Yes, I believe that it could be done for that figure.

Q. The exhibits introduced in connection with Mr. Darling's original exhibit showed that considerably more than that had in fact been paid for it, did they not, in recent years?

A. Yes, on the lines that are shown there.

Q. And during the years 1906, 1907, and 1908 these improved facilities were all available, were they not?

A. Yes.

Q. And you have already stated, I think, that a stretch of track of 200 miles would be a fair amount of track on which to form an estimate of the average cost for the system?

A. Oh no, I didn't; I said that would be a fair amount of work which a contractor would take.

Q. Didn't you also say that that would be about as large an amount as any one of the individual contractors or sub-

contractors at least would have under his control or supervision.

A. Well, that might be true, yes, sir.

Q. Do you think, then, that if the system were to be reproduced as a whole that there would be such a reduction of the price per mile of track laying, divided as the work of doing it would necessarily be, as would justify your reduction to a price of $700 from the price of $1269 actually shown to have been paid for 255 miles of road in 1908?

A. Yes, I do, considering the exhibit and from the investigations that I have made into the elements of cost.

Q. You say considering the exhibit. What do you mean by that?

A. For example, take the first item appearing there, shown as Minnesota lines.

Q. What are you looking at? To be sure that we have got the same sheet, what is the number?

A. I don't recollect what that number is.

Q. I am referring to that sheet in Mr. Darling's original or main exhibit entitled "Statement of actual cost of track laying and ballasting done by Northern Pacific Railway Company during the years 1906, 1907 and 1908."

A. Well, I haven't that statement.

Q. It was put in, I think, in connection with his original exhibit. I will show you this sheet, Mr. Morgan, showing actual prices paid during those years and showing that for a piece of track from Kennewick to Vancouver the actual prices paid for 255 miles were $1269. Those prices were paid notwithstanding the availability and use of the improved facilities that you have spoken of. Do you still think, after seeing that those actual prices have been paid, that $700 would be a fair average?

A. Yes, I do, because you find on there some costs that are very much less than the one to which you have referred.

Q. But do you find any of them that are as low as you have fixed for the average?

A. Not on your statement, but according to my investigation of the records I find some that are less.

Q. Have you produced any evidence of any that were less?

A. I have not so far; I have it here.

Mr. Walter: You might ask him, Mr. Donnelly.

Mr. Donnelly: I assume that you have put in your own testimony.

Mr. Walter: On cross-examination you can get it in detail.

Q. Do you mean that you have some of the Northern Pacific?

A. Yes, I have.

Q. Done in what years?

A. Take the Minnesota lines shown on that statement, where the cost is, I believe, given at $758.08. Now, I find from the accounts that there is a total charge of $134,541.55, from which is deducted the cost of putting the ballast under the track and rental of equipment, amounting to $89,370, leaving a proper cost of $45,171.44, and upon the mileage which is covered in these accounts, being 74.19 miles, the cost per mile is $608.86.

Q. You have a mileage there, you say, of 74 miles?

A. Yes, sir.

Q. Your mileage is different from the mileage as shown on this exhibit for that item?

A. Yes, I think that is probably so.

Q. It appears here as 62.62 miles?

A. Yes. Well, there were 54.17 miles of second main track; there was 1.58 miles of main track; there was the McHugh cutoff amounting to 1.51 miles, new side tracks amounting to 2.61; old track taking up and relaid for revision 6.37 miles; Glyndon to Moorehead, second track 7.95, making a total of 74.19 miles.

Q. Are you sure that you have the identical item there?

A. Well, I could not say that they are the identical item. Of course we have taken this out of the records chargeable to that work, and perhaps we could get a better one if we should take the Big Fork and International Falls. That is another illustration as shown there. Where the average cost, including the ballast put under, was $1556.14 a mile, the actual accounts should take out of that $695.41 per mile, leaving a net cost of $860.73. Now deduct from that charges for peeling ties, which was included in the cost of track laying, and the rental of equipment and trackage, and it would reduce the cost per mile, as we make it, to $692.90 as against $860.46 that is shown.

Q. On how many miles is that?

A. I haven't got the mileage on that here. I think it is the same mileage, though, that you would show.

Q. Both of the instances you have given are instances where the transportation charges would be comparatively low?

A. Yes, that is true.

Q. And where it would be unfair to accept them as representing an average for the system.

A. Well, to the best of my judgment, I think it ought to be done for $700 a mile.

Q. I know, but just answer the question as to transportation charges involved in these two items we have just been considering. It would be unfair to accept them as being a fair average for the system?

A. That might be true and it might not—I can't tell. It would all depend on the labor conditions. If you have to ship in a large amount of men, why, of course the transportation charges increase, but if we are going to proceed upon a hypothetical case—here is a great railroad that is to be built, that will draw labor from every part of this country, just as the Milwaukee has had labor drawn to it. It had a little trouble to start with, but when you have a large proposition to proceed with, men shift from one job to another and from one class of work to another. It is different on a little piece of work. Men come and go all the time, and you have got a constant circle of men coming and going from the work.

Q. But the market from which labor is usually drawn is generally from the East here, is it not?

A. Yes, generally from the East.

Q. The laborers, for example, that have built the Milwaukee Coast Extension have nearly all been sent out from here?

A. From this part of the country, I think, although there are a great many natives in there.

Q. As a general thing they have been sent from here and Chicago, have they not?

A. Oh, I think they have, yes.

By Mr. Dillard:

Q. Mr. Morgan, if I followed you correctly in your testimony with Mr. Holden, you stated that there was a good part of these roads outside of Minnesota that you had not been over prior to making your examination. Is that right?

A. Prior to making this examination?

Q. Making your statement, I mean, yes.

A. Yes, that is so.

Q. And you had to form your judgment as to those wherein you made your estimates, otherwise than where you got it from the company's books, according to your general knowledge of the country and the conditions surrounding those roads in the part of the country where you had not been? Is that right?

A. Yes, that is true to a certain extent. Of course, I have not attempted to make a reproduction estimate of these systems; I have just touched upon certain elements of cost.

Q. Yes, I understand that, but you have a pretty fair general opinion concerning the value of these roads as a whole, have you?

A. No, I haven't any opinion on that at the present time; I have not tried to make up an estimate of value.

Q. You did form a judgment, an estimate, as to their value per mile in Minnesota, did you not?

A. Yes, I did in Minnesota.

Q. Very carefully? Do you remember about what that was?

A. It is given right there in my report, I think. If I can find that report I think I can tell you in just a moment.

(Witness refers to report.)

Q. Per mile valuation for each one, if you have it there. Well, never mind, Mr. Morgan; we will just leave that out. Don't trouble about it.

A. Very well.

Q. There is this, if you can answer it, please: In a general way you know the Union Pacific property, what sort of property it is and how it is managed and run, and its general physical and operating conditions, do you not?

A. I have not been over the Union Pacific in a great many years, and while I know from what I have read of the property, what I know Mr. Harriman has done there, of course I know that the property has been reconstructed, regenerated, into a very fine property; I should judge so.

Q. You are pretty familiar with the country through which it passes, or were in years past, were you not?

A. Yes.

Q. Now, if you can answer this question I would like you to do so; if you cannot, I will not insist on it. From your general knowledge of the Union Pacific system, as a present going concern, how does it compare with the Northern Pacific and the Great Northern; that is, whether it is a property worth as much as either one of those roads or not? Just your best general estimate.

A. I don't believe I could answer that question in dollars and cents.

Q. I don't ask that; I don't ask you to give dollars and cents as to each one.

A. I think the Union Pacific is a very fine property. That is the best judgment I can give you.

Q. And in your judgment as good a property as either of the others, if you are free to answer that?

Mr. Walter: You mean mile for mile?

Mr. Dillard: Mile for mile.

Q. Do you think it is worth as much as either one of those properties, mile for mile, or not?

A. Mr. Dillard, I—

Q. Rather not answer it?

A. I would rather not answer the question.

Q. All right; I won't insist on it.

A. I have not investigated it sufficiently to justify an answer.

The defendant then rested.

The Master: Are you going to put in some more exhibits, Mr. Holden, or do you want to close your testimony now?

Mr. Holden: No; we simply want to check over the figures on the cost of transportation on the Columbia Falls to Rexford Line; but it is so insignificant a matter I may not refer to it again; because I do not want to go too far into details on a matter of this kind.

This closed the testimony, and it was agreed between counsel and the master that the time and place for the argument would be fixed later.

The following appendices "A" to "H" inclusive, show statements and information called for by counsel for defendant during cross-examination of certain witnesses produced by complainants. The page of the record where these statements were called for is shown upon each appendix.

APPENDIX "A."

(Page 87)

AREA AND VALUE AS TESTIFIED TO BY THOMAS COOPER IN THE LUMBER RATE CASE OF THE PORTION OF THE PROPERTY OF THE NORTHERN PACIFIC RAILWAY COMPANY IN THE CITY OF SEATTLE, WASHINGTON, NOT IN ACTUAL USE FOR RAILROAD PURPOSES, APRIL 1ST, 1909.

District	Area in Sq. ft.	Value per Sq. ft.	Total Value
Colorado St. Yard	915,527.00	1.75	$1,602,172.25
Block 370	222,920.00	1.75	390,110.00
Terminal Yard	1,213,903.00	2.50	3,034,757.50
Smith's Cove	3,976,466.19	.50	1,988,233.10
West Seattle	157,679.00	.75	18,929.25
Totals	6,486,495.19		$7,034,202.10

St. Paul, Minn.
May 4th, 1909.

THOMAS COOPER,
Land Commissioner,
Northern Pacific Railway Co.

APPENDIX "B."

(Page 91)

AREA AND VALUE AS TESTIFIED TO BY THOMAS COOPER IN THE LUMBER RATE CASE OF THE PORTION OF THE PROPERTY OF THE NORTHERN PACIFIC RAILWAY COMPANY IN THE CITY OF SEATTLE, WASHINGTON, LOCATED IN STREETS THAT HAVE BEEN VACATED BY THE CITY.

District	Area Sq. ft.	Value Sq. ft.	Total Value
Colorado St. Yard	101,500.	$1.75	$177,625.00
Terminal Yard	53,400.	2.50	133,500.00
Eight Ave. on "Bluff Line"	15,840.	3.00	47,520.00
Smith's Cove	142,854.	.50	71,427.00
One-half of vacated streets in Joint Terminal Yard	95,854.5	2.50	239,636.25
Totals	409,548.5		$669,708.25

NOTE: Streets where Railway Company provided new streets in place of those vacated are not included above.

St. Paul, Minn.,
May 4th, 1909.

THOMAS COOPER,
Land Commissioner,
Northern Pacific Railway Co.

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APPENDIX "C."

(Page 92)

SCHEDULE OF ALL DEEDS IN THE OFFICE OF THE LAND COMMISSIONER OF THE NORTHERN PACIFIC RAILWAY COMPANY UNDER WHICH THE PROPERTY AT SEATTLE, WASH., NOW OWNED BY SAID COMPANY, AND THE VALUE OF WHICH WAS TESTIFIED TO BY THOMAS COOPER IN THE LUMBER RATE CASE, WAS ACQUIRED BY SAID COMPANY, OR BY THE RAILROAD COMPANY, WHICH WAS ITS PREDECESSOR IN INTEREST, THE INTENTION BEING TO SHOW AS FAR AS PRACTICABLE THE COST OF THE PROPERTY WHEN FIRST ACQUIRED FOR RAILROAD PURPOSES.

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
	D. H. Gilman	S. L. S. & E. Ry. Co	5,000.00	Maynard'd Plat
5/ 9-87	James M. Colman and wife	"	1.00	Railroad Ave. Property
5/13-87	Seattle Lumber & Commercial Co	"	nominal	"
5/27-87	Puget Mill Co	"	"	"
2/15-87	Amos Brown and wife	"	"	"
5/21-87	David Gilman and wife	"	1.00	"
2/12-87	Watson C. Squires	"	nominal	"
2/18-87	Carrie B. Hopkins	"	"	"
2/ 1-87	Arthur C. Denny and wife	"	"	"
6/ 6-87	Mrs. Susannah Brunn	"	"	"
2/ 1-87	H. H. Pease and wife	"	"	"
10/14-87	H. H. Pease and wife	"	"	"
2/ 4-87	Wm. Renton and wife	"	"	"
2/ 1-87	George Kinnear and wife	"	"	"
2/ 1-87	Schwabacher Bros. & Co	"	"	"
2/ 9-87	S. N. Sorenson and wife	"	"	"
2/ 3-87	John Leary and wife	"	"	"
2/ 1-87	H. A. Smith	"	"	"

Sheet 1—Continued.

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
2/ 1-87	Thomas T. Minor and wife.....	S. L. S. & E. Ry. Co.	nominal	Railroad Ave. Property
3/ 9-87	E. P. Ferry and wife.....	"	1.00	"
3/11-87	Wm. Renton.....	"	nominal	"
4/ 1-87	Bailey Gatzert and wife.....	"	"	"
6/18-88	C. & P. S. Ry. Co.....	"	"	"
8/15-87	J. F. T. Mitchell.....	"	1,500.00	"
2/19-87	G. L. Manning *et al*	"	1.00	"
8/22-90	S. & E. Construction Co.....	"	nominal expressed 50,000.00 actual	Blk. 12, Bell & Denny's Addition
12/13-99	Julia S. Goodfellow *et al*.....	S. & I. Ry. Co.....	225.00	Railroad Ave. Property
8/ 3-00	C. K. Pike and husband.....	"	1.00	"
2/28-87	Wm. N. Bell and wife.....	S. L. S. & E. Ry. Co	nominal	"
2/ 4-87	Wm. Keene and Wife.....	"	"	"
1/15-96	Francis W. James.....	"	1.00	Smith's Cove Property
1/15-96	Francis W. James.....	"	1.00	"
2/ 8-87	Mary A. Calhoun.....	"	nominal	Railroad Ave. Property
2/ 1-87	D. T. Denny and wife.....	"	"	"
4/11-87	L. W. Foss and wife.....	"	"	"
2/ 2-87	James Dougan and wife.....	"	"	"
2/ 8-87	Wm. Selby.....	"	"	"
2/15-87	Wm. Carkeek *et al*.....	"	"	"
2/ 1-87	Granville O. Haller and wife.....	"	"	"
			56,732.00	

Sheet 2.

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
2/ 7-87	J. W. Van Brocklin and wife.....	S. L. S. & E. Ry. Co.	nominal	Railroad Ave. Property
4/12-87	J. W. List and wife.....	"	"	"
2/ 2-87	H. H. Dearborn and wife.....	"	"	"
3/11-87	Luther Mann and wife.....	"	"	"
2/28-87	L. L. Andrews and wife.....	"	"	"
6/16-88	E. W. Holmes.....	"	600.00	Smith's Cove Property
4/ 6-87	Bailey Gatzert and wife.....	"	2,000.00	"
6/25-85	D. H. Gilman.....	"	525,000.00	"
3/ 5-87	Mary J. Ross.....	"	1.00	S. & I. Line
9/ 6-87	Thomas Burke and wife.....	"	nominal	" "
3/23-87	George Bowman and wife.....	"	"	" "
4/ 5-87	C. P. Stone and wife.....	"	"	" "
2/13-88	C. P. Stone and wife.....	"	1.00	" "
5/10-87	Wm. Ashworth and wife.....	"	nominal	" "
2/14-87	Wm. Ashworth and wife.....	"	1.00	" "
4/13-87	Nellie M. Hoskinson and husband	"	nominal	" "
2/ 6-88	Nellie M. Hoskinson and husband	"	1.00	" "
9/17-87	T. S. Sigvaldson.....	"	nominal	" "
4/13-87	George Dorffel and wife.....	"	"	" "
4/11-87	Wm. H. Llewellyn.....	"	"	" "
8/15-88	John Wackford.....	"	300.00	Burk's Addition
4/13-87	Hiram Burnett and wife.....	"	nominal	S. & I. Line
9/ 8-87	H. B. Bagley and wife.....	"	"	"
4/ 5-87	C. P. Stone and wife.....	"	"	"

Sheet 2—Continued.

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
10/18-87	C. & P. S. Ry. Co.	S. L. S. & E. Ry. Co.	20.00	S. & I. Line
3/29-87	John C. Brantigan and wife.	"	nominal	"
5/16-87	Lydia Carr.	"	"	"
6/24-87	Isaac Dillon.	"	"	"
3/22-87	F. Toklas *et al*.	"	"	"
3/25-87	John H. McGraw	"	"	"
4/11-87	Morton C. Hunter	"	"	"
4/25-88	George R. Wilson.	"	1.00	"
4/6-87	Chas. Hilton	"	nominal	"
3/26-87	W. V. Reinhart and wife.	"	"	"
3/22-93	Michael Day	"	1,000.00	"
12/23-97	H. M. Haller *et al*.	S. & I. Ry. Co.	5,000.00	Smith's Cove Property
9/26-96	State of Washington	S. L. S. & E. Ry. Co	3.00	"
5/11-99	State of Washington	S. & I. Ry. Co.	90.50	Blk. 181, S. T. L.
5/11-99	State of Washington	"	589.00	Smith's Cove Property
5/11-99	State of Washington	"	458.00	"
5/11-99	State of Washington	"	44.86	Ballard Tide Lands
5/11-99	State of Washington	"	2,104.10	Smith's Cove Property
5/11-99	State of Washington	"	5,546.05	Railroad Ave. and Western Ave. Property.
2/13-99	Sol. G. Simpson	"	4,250.00	Blk. 181, S. T. L.
2/13-01	Carry Mill Co	"	1.00	Railroad Ave. Property
			547,011.51	

Sheet 3

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
2/ 6-96	Charles Lauch	S. L. S. & E. Ry. Co.	nominal	Railroad Ave. Property
4/22-01	State of Washington	S. & I. Ry. Co.	256.45	"
9/27-99	State of Washington	"	1.00	Blk. 181, S. T. L.
1/10-00	State of Washington	S.&S.F.Ry.&Nav.Co.	213.97	West Seattle Line
2/ 3-03	Andrew D. Keys and wife	"	1,180.00	"
2/27-03	American Lumber & Shingle.Co.	"	1,911.00	"
3/11-03	Sol. G. Simpson	"	1,211.20	"
3/30-03	Wm. Pigott	"	2,500.00	"
3/26-03	Ed. Cudichee	"	125,006.00	"
5/13-03	Northwestern Improvement Co.	"	3,639.23	"
9/23-03	State of Washington	"	51.00	"
7/22-04	Wm. S. Thompson and wife	N. P. Ry. Co.	1.00	New West Seattle Line
7/22-04	Wm. S. Thompson and wife	"	575.80	West Seattle Line
7/14-04	State of Washington	"	14.29	"
7/26-04	Wm. Pigott and wife	"	1.00	New West Seattle Line
7/15-04	Rose D. Lewis and husband	"	1,000.00	West Seattle Line
9/ 7-04	State of Washington	"	8.18	"
7/27-04	Thos. Flint *et al*	"	100.00	"
9/14-04	Ira Branson and wife	"	400.00	"
9/14-04	George Kinnear *et al*	"	3,813.60	"
10/ 3-04	James H. Lewis *et al*	"	912.50	"
10/14-04	A. C. Phillips	"	1.00	New West Seattle Line
10/17-04	R. B. Albertson and wife	"	1,250.00	West Seattle Line
6/28-04	State of Washington	"	23.91	"

Sheet 3—Continued.

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
7/ 7-04	Alson L. Brown and wife	N. P. Ry. Co	1,500.00	West Seattle Line
10/21-04	J. T. Ronald and wife	"	1.00 expressed 16.00 actual	New West Seattle Line
12/ 5-04	Anna M. Gund and husband	"	1.00	"
1/23-05	Geo. H. Bixby et al	"	500.00	West Seattle Line
2/11-05	McNaught-Collins Imp. Co.	"	1,000.00	"
6/ 3-05	Henrietta M. Haller	"	1.00	New West Seattle Line
6/ 8-05	Chas. E. Burnside and wife	"	10.00	West Seattle Line
10/10-06	Ira Bronson et al	"	500.00	"
3/17-02	Morgan J. Carkeek and wife	"	125.00	Seattle Line
10/26-03	David Graham and wife	"	100.00	"
4/24-97	State of Washington	"	1,292.70	Colorado Street Yard
1/20-96	R. Sartori and wife	C. & P. S. R. R. and N.P.&P.S.S.R.R.	1.00 expressed 344.68 actual	Blk. 194, 197, S. T. L.
7/17-98	R. Sartori and wife	C. & P. S. R. R. Co. and N.P.Ry.Co.	1.00	Railroad Ave. Property
2/ 8-97	State of Washington	N. P. Ry. Co.	1,922.00	S. T. L., Blk. 198
12/12-96	State of Washington	"	631.74	"
			152,016.25	

Sheet 4.

DATE	GRANTOR	GRANTEE	CONSID-ERATION	DESCRIPTION
2/24-96	August Mehlhorn and wife	C. & P. S. R. R. Co. &N.P.&P.S.S.R.R	1.00	Railroad Ave. Property
5/ 8-96	Fred Gasch and wife	"	1.00	"
7/ 1-97	C. & P. S. R. R.	N.P.and P.S.S.R.R..	1.00 expressed 440.96 actual	Blk. 197, S. T. L.
1/28-95	Alanson S. Dunham et al	Thos. F. Oakes, Trustee	1.00 expressed 175,000.00 actual	Yesler Wharf
11/15-97	Clise Investment Co.	C. & P. S. R. R. and N.P.&P.S.S.R.R..	39.13	Railroad Ave. Property
2/ 1-96	Charles Hopkins and wife	"	1.00	"
2/19-96	Union Trust Co.	"	1.00	"
2/20-96	Eliza D. Starr	"	1.00	"
2/15-96	Amos Brown and wife	"	1.00	"
2/24-96	Puget Mill Co	"	1.00	"
11/ 9-96	State of Washington	N. P. Ry. Co.	713.21	"
11/ 4-96	The Commercial Co	"	9,582.41	"
2/14-96	Arthur A. Denny and wife	C. & P. S. R. R. Co. & N. P. & P. S. S. R. R. Co.	1.00	"
2/13-96	Charles A. Kinnear	"	1.00	"
2/20-96	A. W. Edwards and wife	"	1.00	"
2/13-96	J. J. Post and wife	"	1.00	"
8/31-97	A. H. Denman	"	1.00	"
2/14-96	Hiram H. Pease and wife	"	1.00	"
2/14-96	Mrs. J. Brunn	"	1.00	"

Sheet 4—Continued.

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
1/29-97	C. & P. S. R. R. Co.	N. P. Ry. Co.	1.00 expressed 500.00 actual	Railroad Ave. Property
2/13-96	David Gilmore and wife	C. & P. S. R. R. Co. & N. P. & P. S. S. R. R. Co.	1.00	"
11/18-97	C. & P. S. R. R. Co.	N. P. & P. S. S. R. R. Co.	1.00	"
11/12-97	C. & P. S. R. R. Co.	"	1.00	"
4/30-97	Seattle Tide Land Co.	N. P. & P.S.S.R.R.& C.& P.S.R.R.	500.00	Elliott Ave. Line
5/ 3-97	John Leary and wife	C. & P. S. R. R. Co. & N. P. & P. S. S. R. R.	Exchanged for other property	Railroad Ave. Property
11/27-96	Gatzert-Schwabacher Land Co.	"	"	"
9/ 1-98	State of Washington	N.P.&C.&P.S.R.R.	383.36	Western Ave. Property
7/12-98	State of Washington	N. P. Ry. Co.	168.60	Blk. 198, S. T. L.
5/ 2-98	State of Washington	"	105.19	Old Hop House Site
9/15-98	State of Washington	"	109.40	"
9/19-98	Gatzert-Schwabacher Land Co.	C. & P. S. R. R. Co. & N. P. & P. S. S. R. R.	Exchanged for other property	Railroad Ave. Property
10/ 3-99	C. J. Smith and wife	N. P. Ry. Co.	5.00 expressed 121,217.93 actual	Western Ave. Property & Blk. 181, S. T. L.
8/25-99	Puget Sound National Bank	"	40,000.00	Blk. 198, S. T. L.
8/15-99	State of Washington	C. & P. S. R. R. & N. P. Ry. Co.	45.48	Western Ave. Property
			348,822.67	

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Sheet 5

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
9/ 1-99	Dexter Horton & Co	N. P. Ry. Co.	$55,000.00	Block 198, S. T. L.
8/31-99	Mary A. Denny et al	"	40,000.00	"
1/16-00	C. J. Smith and wife	"	5.00 expressed 2,566.68 actual	Colorado Street Yard
3/ 5-00	C. J. Smith and wife	"	5.00 expressed 334.00 actual	"
5/19-00	C. J. Smith and wife	"	5.00 expressed 525.00	"
11/17-99	C. J. Smith and wife	"	5.00 expressed 10,881.93 actual	"
5/11-99	State of Washington	S. & I. Ry. Co.	12,623.23	Smith's Cove Property, Railroad Ave. Loop
12/11-01	King County	N. P. Ry. Co.	700.00	At Argo
8/31-00	George W. Hyde and wife	"	850.00	Near Argo
6/22-00	Wm. R. Brawley and wife	"	1.00	Colorado Street Line
7/20-00	Dexter Horton & Co. et al	"	6,035.60	Duwamish Ave. Line
6/20-00	George Kinnear et al	"	3,554.25	Across Island No. 1
1/17-96	Morgan J. Carkeek and wife	S. L. S. & E. Ry. Co.	nominal	Railroad Ave. Property
1/17-96	Morgan J. Carkeek et al	"	"	"
1/30-96	Granville O. Haller and wife	"	1.00	"
2/ 7-96	Mary A. Gaffney	"	1.00	"
1/31-96	J. W. Clise et al	"	1.00	"
2/29-96	R. & B. Winsor and wife	"	1.00	"

Sheet 5—Continued

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
1/13-03	Wm. R. Brawley et al.	N. P. Ry. Co.	$ 6,406.20	Across Island No. 1
2/18-03	Wm. R. Brawley et al.	"	4,560.00	Across Island No. 1 on Walla Walla Ave.
10/15-02	C. & P. S. Ry. Co.	"	Exchanged for other property	Seattle Line
3/13-03	Rainier Invest. Co.	"	5,335.00	Duwamish Ave. Line
4/24-03	King Co. et al.	"	350.00	Argo
6/13-02	Smith's Cove Land Co.	"	820.00	Interbay
5/30-03	Thomas Burke and wife	"	1.00	S. & I. Line
8/14-03	N. W. I. Co.	"	1.00 expressed 500.00 actual	Argo
11/11-03	N. W. I. Co.	"	1.00 expressed 1,000.00 actual	"
12/ 9-03	Geo. W. McFarlane and wife	"	700.00	Near Argo
12/ 9-03	Geo. W. McFarlane and wife	"	100.00	Argo
3/ 9-91	John L. Simpson.	N.P.&P.S.S.R.R.	2,530.00	Near Argo
4/ 3-91	W. C. Painter et al.	"	10,996.64	Painter's Add.
4/ 3-91	Noble C. Wallingford and wife.	"	6,605.83	Wallingford's Add.
1891	Frank D. Black and wife.	"	7,500.00	Black's Elliott Bay Add.
4/ 3-91	W. S. Ladd et al.	"	22,146.44	Duwamish Ave. Line
4/ 3-91	W. S. Ladd et al.			Duwamish Ave. Line
			202,626.80	

Sheet 6.

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
1/ 7-04	C. & P. S. R. R. Co.	N. P. Ry. Co.	Exchanged for other property	Railroad Ave. Property
6/25-04	George L. Aggers and wife	"	85.00	Argo
8/ 4-04	Hattie M. Vandewater and husband	"	200.00	"
6/29-04	Portland Cordage Co.	"	Exchanged for other property	Smith's Cove Property
11/23-04	Ernst Portway	"	100.00	"
3/16-05	Rainier Investment Co	"	1.00	Colorado St. Line and 2nd Ave. S. Line
12/12-04	George Kinnear et al	"	Exchanged for other property	Island No. 1
8/10-05	C. & P. S. R. R. Co.	"	"	Inshore Line
8/10-05	C. & P. S. R. R. Co.	"	"	"
8/10-05	C. & P. S. R. R. Co.	"	"	"
11/16-07	S. & M. Ry. Co	"	1.00 expressed	Joint Yard
11/16-07	S. & M. Ry. Co	"	1.00 expressed	"
11/16-07	S. & M. Ry. Co	"	1.00 expressed	"
11/16-07	S. & M. Ry. Co	"	1.00 expressed	Joint Yard and Tunnel
4/ 1-08	G. N. Ry. Co.	"	1.00 expressed 1,873,856.66 actual	Joint Yard

Sheet 6—Continued.

DATE	GRANTOR	GRANTEE	CONSIDERATION	DESCRIPTION
3/19-08	State of Washington	N. P. Ry.Co.	$ 7,002.00	S. & I. Line-Edgewater
5/15-08	George Kinnear et al	"	10,572.00	New West Seattle Line
11/ 7-08	O. & W. R. R. Co.	"	10.00 expressed 18,870.80 actual	Duwamish Ave. Line
6/24-08	O. & W. R. R. Co.	"	10.00 expressed	Seattle Line
7/24-08	O. & W. R. R. Co.	"	10.00 expressed 24,660.16 actual	"
10/ 7-07	O. & W. R. R. Co.	"	10.00 expressed 3,164.28 actual	"
1/ 2-08	W. F. McFarland and wife	N. W. I. Co.	23,483.00	Fremont-Ballard Line
1/ 2-08	John M. Hughes	"	3,450.00	"
1/16-08	George A. McPherson	"	1,220.00	"
			1,966,664.90	

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Sheet 7.

DATE	GRANTOR	GRANTEE	CONSID-ERATION	DESCRIPTION
6/25-08	George A. McPherson	N. W. I. Co.	$ 2,700.00	Fremont-Ballard Line
6/23-08	Lester B. Elwood and wife	"	2,150.00	"
8/19-08	Lester B. Elwood and wife	"	14,500.00	"
8/13-08	John M. Hughes	"	1,100.00	"
9/ 9-08	George A. McPherson	"	1,100.00	"
8/19-08	Lester B. Elwood and wife	"	350.00	"
9/ 9-08	George A. McPherson	"	1,350.00	"
8/ 7-08	John M. Hughes	"	5,000.00	"
8/19-08	Lester B. Elwood and wife	"	390.00	"
8/19-08	Lester B. Elwood and wife	"	2,600.00	"
8/28-08	Lester B. Elwood and wife	"	3,150.00	"
8/28-08	Lester B. Elwood and wife	"	800.00	"
11/12-08	Boulevard Syndicate Inc	"	7,500.00	"
10/27-08	Wm. H. Gates and wife	"	2,250.00	"
10/29-08	Perry E. Barnum and wife	"	2,500.00	"
1/ 7-09	Lester B. Elwood and wife	"	5,500.00	"
2/15-09	Henry S. Butler	"	103,075.00	Terry Ave. Property
2/15-09	Henry S. Butler	"	24,910.15	"
2/ 9-09	Denny Land Co	"	21,600.00	Fremont-Ballard Line
2/ 9-09	N. T. Thurlow	"	5,250.00	"
2/ 9-09	Nathan P. Myhre	"	5,000.00	Lake Union Line
2/12-09	Henry Bridger	"	1,700.00	"
8/27-08	M. L. Walker and wife	"	7,950.00	"
7/24-08	Henry Jensen	"	6,200.00	"
7/24-08	George Hart	"	1,500.00	Fremont-Ballard Line
2/27-09	John Paulson	N. P. Ry. Co.		

Sheet 7—Continued.

DATE	GRANTOR	GRANTEE	CONSID-ERATION	DESCRIPTION
2/27-09	W. Johnson	N. P. Ry. Co.	$ 3,000.00	Fremont-Ballard Line
2/27-09	Goldberg Paulson	"	1,500.00	"
2/27-09	Rene Hilleware	"	3,000.00	"
2/27-09	Cornelius A. Heneken	"	6,000.00	"
2/27-09	Emma A. Shumway	"	6,000.00	"
3/ 4-09	C. A. Remsberg	"	1,500.00	"
3/ 4-09	Rex J. Ross	"	1,575.00	"
3/ 1-09	Ida G. Sparkman	"	3,150.00	"
2/27-09	G. A. Lombard et al	"	1,250.00	Lake Union Line
3/ 6-09	The Seattle Seminary	"	17,500.00	Terry Ave. Property
3/ 6-09	C. J. Kearney	"	6,000.00	Lake Union Line
3/ 6-09	Denny Land Co	"	900.00	Fremont-Ballard Line
3/ 6-09	C. H. Burnett	"	1,250.00	"
3/ 8-09	Ella B. Whitworth White	"	3,200.00	"
3/ 9-09	L. C. Crawford	"	2,500.00	"
3/ 9-09	Jacob Furth	"	70.92	Lake Union Line
3/10-09	E. B. Newell	"	1,500.00	Fremont-Ballard Line
3/10-09	Louis Holmes	"	7,500.00	"
3/10-09	B. B. Stuart	"	412.97	"
			297,934.01	

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Sheet 8.

DATE	GRANTOR	GRANTEE	CONSID-ERATION	DESCRIPTION
3/10-09	S. P. Dixon	N. P. Ry. Co.	$ 250.00	Lake Union Line
3/ 6-09	Mary McCormack	"	439.80	"
3/17-09	S. P. Dixon	"	320.40	Fremont-Ballard Line
3/17-09	I. A. Fay	"	3,000.00	"
3/30-09	Mary J. Ross	"	12,800.00	"
			16,810.20	

RECAPITULATION.

Sheet 1	$ 56,732.00
Sheet 2	547,011.51
Sheet 3	152,016.25
Sheet 4	348,822.67
Sheet 5	202,626.80
Sheet 6	1,966,664.90
Sheet 7	297,934.04
Sheet 8	16,810.20
Total	$3,588,618.37

NOTE.—Wherever deeds showed a nominal consideration and the actual consideration could be ascertained, the latter has also been inserted in the schedule.

THOMAS COOPER,
Land Commissioner, Northern Pacific Railway Co.

St. Paul, Minn., June 7, 1909.

APPENDIX "D."

(Page 93.)

AREA AND VALUE AS TESTIFIED TO BY THOMAS COOPER IN THE LUMBER RATE CASE OF THE PORTION OF THE PROPERTY OF THE NORTHERN PACIFIC RAILWAY COMPANY IN THE CITY OF SPOKANE, WASHINGTON, NOT IN ACTUAL USE FOR RAILROAD PURPOSES, APRIL 1ST, 1909.

District.	Area in Sq. ft.	Value per Sq. ft.	Total Value.
Bernard to Washington St.	39,900	$3.50	$209,650.00
Washington to Stevens St.	35,625	4.20	149,625.00
Stevens to Howard St.	35,625	4.31	153,543.75
Howard to Mill St.	47,963	4.73	226,864.99
Mill to Post St.	35,625	4.55	162,093.75
Post to Lincoln St.	33,750	3.50	118,125.00
Lincoln to Monroe St.	75,750	3.22	243,915.00
Monroe to Madison St.	75,750	2.80	212,100.00
Madison to Jefferson St.	77,375	2.45	189,568.75
Jefferson to Adams St.	77,250	1.75	135,187.50
Adams to Cedar St.	65,940	1.54	101,547.60
Totals.	620,553		$1,902,221.34

Annual rental derived from the portion of the above property which has been leased—$12,962.00.

St. Paul, Minn.,
May 4th, 1909.

THOMAS COOPER,
Land Commissioner Northern Pacific Ry Co.

APPENDIX "E."
(Page 94.)

AREA AND VALUE AS TESTIFIED TO BY THOMAS COOPER IN THE LUMBER RATE CASE OF THE PORTION OF THE PROPERTY OF NORTHERN PACIFIC RAILWAY COMPANY IN THE CITY OF TACOMA, WASHINGTON, NOT IN ACTUAL USE FOR RAILROAD PURPOSES, APRIL 1ST, 1909.

District.	Area in Acres.	Value per Acre.	Total Value.
Part of Lot 4, Sec. 3-20-3	2.075	$ 8,000.00	$ 16,600.00
Blocks 7136, 7138 and 7237	1.129	23,511.22	26,544.17
Lot 6, Sec. 4-20-3	5.367	10,000.00	53,670.00
Lot 7, Sec. 4-20-3	.439	10,000.00	4,390.00
Tide Land, Blk. 53	28.929	10,000.00	289,290.00
Tide Land, Blk. 51	4.896	15,000.00	73,440.00
Blk. "A" N. P. Ry. Co's plat	61.328	19,311.59	1,184,341.19
Car Shop Property, Sec. 13-20-2	46.956	1,000.00	46,956.00
Car Shop Property Clement's 2nd Addition	5.000	1,000.00	5,000.00
2 Tracts in Neisson D. L. C. Sec. 24-20-2	8.909	1,500.00	13,363.50
Totals	165.028		$1,713,594.86

Annual rental derived from portion of above property which has been leased—$1,280.00.

St. Paul, Minn.,
May 4th, 1909.

THOMAS COOPER,
Land Commissioner Northern Pacific Railway Co.

APPENDIX "F."

(Page 474.)

NORTHERN PACIFIC RAILWAY COMPANY.

LIVINGSTON TO MUIR.

COMPARISON BETWEEN THE APPROXIMATE ESTIMATE OF COST DATED JUNE 1ST, 1906, AND THE ACTUAL COST TO FEBRUARY 28TH, 1909.

	Original Approximate Estimate June 1st, 1906.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr. Pd. Cntr.	Cost.
Engineering	.....	.....	$ 22,600.00	.....	.....	$ 21,623.06
Right of Way and Station Grounds	.....	.....	3,500.00	.....	.....	11,156.45
Clearing and Grubbing	.....	.....	125.00	.....	.....	90.22
GRADING:						
Earth	845,000	18c.	152,100.00	168,554	19c.	32,025.26
Earth	.....	.....	.....	94,646	23c.	21,768.56
Hard Pan	.....	.....	.....	311,592	35c.	109,057.20
Loose Rock	110,000	40c.	44,000.00	8,150	40c.	3,260.00
Solid Rock	300,000	90c.	270,000.00	773,218	90c.	695,896.20
Solid Rock, Borrow	.....	.....	.....	47,404	55c.	26,072.20
Total Yardage	1,255,000	.....	.....	1,403,564	.....	.....
Overhaul	2,510,000	1c.	25,100.00	5,411,095	1c.	54,110.95
Overhaul	196,400	20c.	39,280.00	.....	.....	.....
Train service	.....	.....	1,350.00	.....	.....	.....
Extra bills, extra work by Company force, transportation of men, tools and plant	.....	.....	.....	.....	.....	101,373.70
Tunnels	.....	.....	64,400.00	.....	.....	76,818.29
Bridging	.....	.....	15,500.00	.....	.....	27,381.58
Ties	.....	.....	24,594.00	.....	.....	36,765.84

	Original Approximate Estimate June 1st, 1906.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr.Pd. Cntr.	Cost.
Rails			$ 48,500.00			$ 102,314.07
Track Fastenings			12,501.00			11,664.65
Frogs and Switches			1,000.00			3,006.01
Ballast			22,500.00			37,398.97
Tracklaying and Surfacing			10,500.00			27,150.67
Fencing Right of Way			1,500.00			124.88
Crossings and Signs			250.00			95.80
Telegraph and Telephone Lines			750.00			1,611.94
Water Stations						8,379.11
Miscellaneous Structures			1,450.00			380.09
Trans. of men and material			*17,000.00			†72,355.01
Rent of Equipment						456.00
Stationery and Printing						10.90
Store account						920.21
			$778,500.00			$1,483,267.82

*This item includes all charges to transportation of men, tools and material.

†This item includes all charges to transportation of men, tools and material for the period up to July 1st, 1907. After that date distribution has been made in accordance with the Interstate Commerce classification and transportation charges have been made against accounts benefited.

APPENDIX "F."

Northern Pacific Railway Company.

Garrison to Missoula Revision of Line and Grade.

COMPARISON BETWEEN THE APPROXIMATE ESTIMATE OF COST DATED JUNE 14TH, 1907, AND THE ACTUAL COST TO FEBRUARY 28TH, 1909.

	Original Approximate Estimate June 14th, 1907.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr.Pd. Cntr.	Cost.
Engineering			$ 102,533.00			$ 131,489.97
Right of Way and Station Grounds			105,251.00			134,686.10
Clearing and Grubbing			7,925.00			23,893.30
GRADING:						
Earth hauled 300 feet	441,040	30c.	132,336.00	1,407,443	19c.	267,414.17
Earth hauled 300 to 1000 feet	3,054,465	23	702,527.00	1,641,613	23	377,270.99
Hard Pan				857,929	37	317,433.73
Shell Rock				26,282	32	8,410.24
Loose Rock	156,200	42	65,604.00	134,500	42	56,490.00
Solid Rock	410,053	95	389,551.00	709,758	95	674,270.10
Solid Rock, Borrow				7,110	55	3,910.50
Grade Raising Material				94,154	27	25,421.58
FILLING WASHOUTS:						
Earth				97,816	15	14,672.40
Earth haul 300 feet				33,943	19	6,449.17
Earth haul 300 to 1000 feet				248,306	23	57,110.38
Hard Pan				157,988	37	58,455.56
Loose Rock				5,735	42	2,408.70
	4,061,758			5,422,627		
Overhaul	13,099,600	01	130,996.00	20,946,353	01	209,463.53

	Original Approximate Estimate June 14th, 1907.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr.Pd. Cntr.	Cost.
Overhaul, washout filling				2,909,622	01	$ 29,096.22
Extra Bills, extra work by the Company forces, transportation of men, material and plant						258,572.61
Protection of banks			$ 60,250.00			74,445.01
Tunnels			390,331.00			687,531.67
Bridges, Trestles and Culverts			575,919.00			888,849.68
Ties			135,713.00			189,542.22
Rails			324,342.00			445,390.60
Frogs and Switches			10,358.00			16,276.04
Track fastenings and other material			125,852.00			155,560.89
Ballast			219,086.00			157,816.32
Track laying and Surfacing						194,495.33
Fencing Right of Way			6,374.00			1,669.29
Crossings and Signs			9,711.00			2,476.59
Interlocking and other signal apparatus						2.80
Telegraph and Telephone Lines			5,427.00			
Station Buildings and Fixtures			2,000.00			134.41
Water Stations			7,000.00			3,823.20
Transportation of men and material						517.78
Rent of Equipment						18,848.83
Repairs Equipment						2,002.89
Stationery and Printing						396.90
Taxes						103.56
Miscellaneous Buildings			1,200.00			
			$3,510,266.00			$5,496,803.26

APPENDIX "F."

NORTHERN PACIFIC RAILWAY COMPANY.
WHITE PINE HILL GRADE REVISION.

COMPARISON BETWEEN THE APPROXIMATE ESTIMATES OF COST DATED FEBRUARY 14TH, 1907, AND THE ACTUAL COST TO FEBRUARY 28TH, 1909.

	Original Approximate Estimate February 14, 1907.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr.Pd. Cntr.	Cost.
Engineering			$ 79,761.90			$ 39,285.33
Right of Way and Station Grounds			15,375.00			37,835.80
Clearing and Grubbing			14,815.00			36,078.71
GRADING:						
Earth hauled 300 feet or less	800,000	20c.	160,000.00	136,250	20c.	27,250.00
Earth hauled 300 to 1000 feet	1,400,000	23	322,000.00	331,595	24	79,582.80
Hard Pan				174,791	37	64,672.67
Cemented Gravel	185,000	35	65,092.00	774,656	40	309,862.40
Loose Rock	87,780	40	35,112.00	371,219	45	167,048.55
Solid Rock	315,161	100	315,161.00	817,023	95	776,171.85
Total Yardage	2,787,941			2,605,534		
Overhaul	10,511,780	01	105,117.80	13,224,584	01	132,245.84
Extra Bills, extra work by Company force, transportation of men, tools and plant						131,879.46
Bridges, Trestles and Culverts			143,640.50			178,580.68
Ties			35,389.90			77,821.28
Rails			124,636.00			157,981.61
Track fastenings			27,109.24			40,198.38
Frogs and Switches			1,326.40			2,931.89

	Original Approximate Equipment February 14, 1907.			Cost to February 28, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr. Pd. Cntr.	Cost.
Ballast			$ 20,627.75			$ 57,251.69
Tracklaying and Surfacing			20,226.45			46,043.85
Fencing Right of Way			5,340.00			219.04
Crossings and Signs			588.00			4,701.21
Telegraph and Telephone Lines						
Station Buildings and Fixtures			1,075.00			2,820.88
Water Stations			3,400.00			15,382.39
Fuel Stations						11,674.81
Miscellaneous Structures			3,525.00			
Transportation of men and materials			*175,889.06			†25,089.51
Rent of Equipment						4,708.63
Repairs of Equipment						3.09
Stationery and Printing						47.44
Insurance						137.40
Taxes						59.20
Construction Equipment			500.00			56.61
Store Account						27,665.19
Operating Expenses and Earnings			500.00			
Totals			$1,676,208.00			$2,455,288.19

*This item includes all charges to transportation of men, tools and material.

†This item includes all charges to transportation of men, tools and material for the period up to July 1st, 1907. After that date distribution has been made in accordance with the Interstate Commerce classification and transportation charges have been made against accounts benefited.

APPENDIX "F."

NORTHERN PACIFIC RAILWAY COMPANY.
ST. REGIS TO PARADISE.
COMPARISON BETWEEN APPROXIMATE ESTIMATE OF COST DATED JANUARY 15TH, 1907, AND THE COST TO FEBRUARY 28TH, 1909.

	Original Approximate Estimate January 15th, 1907.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr.Pd. Cntr.	Cost.
Engineering			$ 42,157.50			$ 64,622.51
Right of Way and Station Grounds			4,500.00			19,155.55
Clearing and Grubbing			15,600.00			20,204.19
GRADING:						
Earth	390,000	19c.	74,100.00	200,465	19c.	38,088.35
Earth	825,000	21	173,250.00	418,159	23	96,176.57
Hard Pan				771,384	37	285,412.08
Shell Rock				95,550	32	30,576.00
Loose Rock	280,000	42	117,600.00	229,447	42	96,367.74
Solid Rock	190,000	95	180,500.00	210,806	95	200,265.70
Solid Rock, Borrow				22,120	55	12,166.00
Total Yardage	1,685,000			1,947,931		
Overhaul	5,000,000	1	50,000.00	8,515,565	1	85,155.65
Extra bills, extra work by force account, transportation of men, material and plant						55,466.81
Protection of Banks			15,600.00			71,189.25
Tunnels			83,750.00			221,286.80
Bridges, Trestles and Culverts			404,717.20			711,114.45
Ties			23,302.80			51,877.26
Rails			105,390.00			120,924.34

APPENDIX "F."

NORTHERN PACIFIC RAILWAY COMPANY.

VALLEY CITY CHANGE OF LINE (ALTA TO BEREA).

COMPARISON BETWEEN THE APPROXIMATE ESTIMATES OF COST AND THE ACTUAL COST TO FEBRUARY 28TH, 1909.

	Original Approximate Estimate February 28, 1906, February 13, 1907 and July 21, 1907.			Cost to February 28, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr. Pd.Cntr. Average	Cost.
Engineering			$ 37,238.00			$ 19,025.48
Right of Way and Station Grounds			13,000.00			44,413.87
Clearing and Grubbing						
GRADING:						
Earth	674,400 1,000	21c. 20	141,824.00	725,994	29.5c	214,168.23
Extra bills, extra work by Company force, transportation of men, tools and equipment						85,005.76
Protection of Banks						2,363.04
Bridges, Trestles and Culverts			574,700.00			726,896.84
Ties			14,533.00			31,502.74
Rails			45,192.00			47,192.40
Frogs and Switches			569.00			241.07
Track Fastenings			6,546.00			5,674.61
Ballast			20,490.00			15,300.38
Track Laying and Surfacing			5,754.00			28,875.14
Fencing Right of Way			1,500.00			927.46
Crossings and Signs			350.00			4,474.37
Telegraph and Telephone Lines			1,500.00			

	Original Approximate Estimate February 28, 1906, February 13, 1907 and July 21, 1907.			Cost to February 28, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr. Pd,Cntr. Average	Cost.
Station Buildings and Fixtures			$ 2,500.00			$ 188.46
Water Stations			5,600.00			15,923.61
Miscellaneous Structures			11,400.00			21,921.04
Transportation of Men and Material			*39,474.00			†16,092.88
Rent of Equipment			17,118.00			16,984.54
Repairs Equipment						
Stationery and Printing						9.87
Insurance						6.00
Other Expenditures						140.45
Injuries to Persons						5,000.20
Undistributed Bills						762.73
Totals			$ 939,288.00			$1,303,091.17

*This item includes all charges to transportation of men, tools and material.

†This item includes all charges to transportation of men, tools and material for the period up to July 1st, 1907. After that date distribution has been made in accordance with the Interstate Commerce classification and transportation charges have been made against accounts benefited.

	Original Approximate Estimate January 15th, 1907.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr.Pd. Cntr.	Cost.
Frogs and Switches			$ 1,200.00			$ 1,243.06
Track Fastenings and Other Material			20,954.50			29,463.26
Ballast			21,375.00			19,578.60
Tracklaying and Surfacing			10,950.00			33,124.03
Roadway Tools						3,378.65
Fencing Right of Way			840.00			4,060.66
Crossings and Signs			650.00			1,690.00
Interlocking and other Signal Apparatus						11.56
Telegraph and Telephone Lines			3,300.00			2,136.41
Station Buildings and Fixtures			6,000.00			
Shops, Engine House and Turn Tables						96.07
Water Stations			5,000.00			423.01
Miscellaneous Structures			3,000.00			5,952.55
Transportation of Men and Material			*83,005.00			†35,627.94
Rent of Equipment						4,173.75
Repair of Equipment						1,283.62
Stationery and Printing						172.81
Insurance						86.45
Taxes						78.86
Undistributed bills						62.55
Total			$1,446,742.00			$2,322,693.09

*This item includes all charges to transportation of men, tools and material.

†This item includes all charges to transportation of men, tools and material for the period up to July 1st, 1907. After that date distribution has been made in accordance with the Interstate Commerce classification and transportation charges have been made against accounts benefited.

APPENDIX "F."

NORTHERN PACIFIC RAILWAY COMPANY.
LINE FROM MANDAN SOUTH SEVENTY-TWO MILES.

	Original Approximate Estimate February 15th, 1908.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr.Pd. Cntr.	Cost.
Engineering			$ 130,565.36			
Right of Way and Station Grounds			42,203.00			
Clearing and Grubbing			3,200.00			
GRADING:						
Earth	1,909,000	20c.	381,800.00			
Hard Pan	1,349,000	35	472,150.00			
Loose Rock	100,000	45	45,000.00			
Solid Rock	346,000	80	276,800.00			
Overhaul	4,635,100	01	46,351.00			
Train service and Rent of Equipment			6,840.00			
Protection of Banks			28,225.00			
Contingencies			63,858.30	NO WORK DONE.		
Bridges, Trestles and Culverts			135,839.00			
Ties			128,429.00			
Rails			346,556.00			
Track Fastenings			84,296.00			
Frogs and Switches			4,620.00			
Tracklaying and Surfacing			91,773.00			
Ballast			87,329.00			
Station Buildings and Fixtures			17,610.00			
Water Stations			33,250.00			
Fuel Stations			10,000.00			
Fencing Right of Way			21,600.00			
Snow Fencing			25,344.00			

	Original Approximate Estimate February 15th, 1908.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Unit Pr.Pd. Cntr.	Cost.
Stock Yards			$ 4,900.00	NO WORK DONE.		
Crossings, Cattle Guards and Signs			2,920.00			
Section and Tool Houses			13,600.00			
Miscellaneous Structures			6,440.00			
Telegraph Lines			7,200.00			
Transportation Charges			223,174.00			
			$2,741,872.66			

APPENDIX "F."

NORTHERN PACIFIC RAILWAY COMPANY.
LAKE PARK TO GLYNDON.

COMPARISON BETWEEN THE APPROXIMATE ESTIMATES OF COST AND THE ACTUAL COST TO FEBRUARY 28TH, 1909.

	Original Approximate Estimates of Jan. 26, 1906, Jan. 27, 1906, Feb. 8, 1906, and May 20, 1908			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Cntr. Pr.& Pr.Co. Work.	Cost.
Engineering			$ 102,076.00			$ 65,178.41
Right of Way and Station Grounds			109,925.00			172,909.26
Clearing and Grubbing			1,200.00			11,583.56
GRADING:						
Earth	3,387,900	15c.	508,185.00	17,398	12.48c.	2,171.27
Earth	235,000	17	39,950.00	58,345	16.64	9,708.61
Earth	300,000	17.5	52,500.00	691,942	18.72	129,531.54
Earth	950,000	20.558	195,301.00	67,784	26	17,623.84
Earth	700,000	20.4	142,800.00	115,384	29.12	33,599.82
Earth (by Company forces)				4,975,895	29.5835	1,472,043.90
Loose Rock				59,562	36.4	21,680.57
Loose Rock				212,848	41.6	88,544.77
Solid Rock				700	93.6	655.20
Total Yardage	5,572,900			6,199,858		
Handling Material	115,000	10	11,500.00			
Handling Material	225,000	7	15,750.00			
Overhaul	3,300,000	1	33,000.00	12,650,993	1	126,509.93
Overhaul				383,500	0.25	958.75
Ditching Work			4,784.00			

	Original Approximate Estimates of Jan. 26, 1906, Jan. 27, 1906, Feb. 8, 1906, and May 20th, 1908.			Cost to February 28th, 1909.		
	Quantities Cu. Yds.	Unit Price.	Cost.	Quantities Cu. Yds.	Cntr. Pr. & Pr. Co. Work.	Cost.
Extra bills, transportation of men, tools and material, etc						$ 50,077.17
Protection Banks			$ 9,000.00			
Bridges, Trestles and Culverts			134,536.00			121,118.93
Ties			80,125.00			110,148.48
Rails			227,925.00			239,334.65
Track Fastenings			33,027.00			49,097.05
Frogs and Switches			3,778.00			4,983.11
Ballast			95,725.00			105,211.40
Track Laying and Surfacing			52,939.00			133,012.10
Fencing Right of Way			4,900.00			3,416.27
Crossings and Signs			920.00			2,147.66
Interlocking and Signal Apparatus						414.63
Telegraph and Telephone Lines			3,800.00			2,472.51
Station Buildings and Fixtures			6,300.00			624.80
Shops, Engine Houses and Turn Tables			10,500.00			6,562.56
Water Stations			9,000.00			27,069.49
Fuel Stations			12,516.00			13,297.43
Miscellaneous Structures			23,200.00			4,614.32
Transportation of Men and Material			*121,336.00			†137,989.26
Rent of Equipment			104,140.00			130,150.85
Stationery and Printing						218.35
Insurance						38.00
Taxes						54.23
Construction Equipment						2,924.05
Other Expenditures						218.49

	Original Approximate Estimates of Jan. 26, 1906, Jan. 27, 1906, Feb. 8, 1906, and May 20, 1908.			Cost to February 28, 1909.		
	Quantities Cu. Yds.	Unit Price	Cost.	Quantities Cu. Yds.	Cntr. Pr. & Pr. Co. Work	Cost
Injuries to Persons						$3,914.25
Undistributed Bills						53.56
Contractor's Profit			$38,502.00			
Credit old material			48,349.00			
Net total			$2,140,791.00			$3,301,863.03

*This item includes all charges to transportation of men, tools and material.

†This item includes all charges to transportation of men, tools and material for the period up to July 1st, 1907. After that date distribution has been made in accordance with the Interstate Commerce classification and transportation charges have been made against accounts benefited.

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APPENDIX G.

(Page 588.)

THE FOLLOWING IS COPY OF STATEMENT OFFERED IN SO-CALLED SPOKANE CASE, CALLED FOR BY COUNSEL FOR DEFENDANT, AT PAGE 588.

AMENDED STATEMENT BASED ON THE COST OF THE SEATTLE TUNNEL, BEING TAKEN CARE OF BY THE GREAT NORTHERN AND NORTHERN PACIFIC, EACH ONE-HALF.

Deduct from statement already submitted:

Difference Between ⅔ and ½ of Cost of Tunnel	$	308,000
3% from Engineering Item		9,240
10% from Contingencies		31,724
1% from General and Legal Expenses		3,490
10% from Interest Item		35,245
Total amount to be deducted	$	387,699
Total amount of submitted statement		$415,167,616
Deduct as above		387,699
Total		414,779,917

Making average cost per mile of main track, $62,511.

AL IN BOOK

GREAT NORTHERN RAILWAY.

COST OF REPRODUCTION OF SYSTEM.

6635.34 Miles Main and Second Tracks.
1480.24 Miles Side Tracks.
8115.58 Miles Total Tracks.

Engineering		$ 6,860,947.00
Right of Way and Station Grounds		87,067,532.00
Grading		93,098,889.00
Tunnels		7,139,620.00
Bridges, Trestles and Culverts		17,953,023.00
Ties		18,690,731.00
Rails		31,054,392.00
Track Fastenings		7,375,495.00
Frogs and Switches		904,450.00
Ballast		10,509,000.00
Tracklaying and Surfacing		6,998,409.00
Fencing Right of Way		760,815.00
Crossings, Cattle Guards and Signs		1,922,160.00
Interlocking or Signal Apparatus		386,190.00
Telegraph Lines		2,198,283.00
Station Buildings and Fixtures		3,276,300.00
Shops, Roundhouses and Turntables		3,667,900.00
Shop Machinery and Tools		1,779,692.00
Water Stations		1,983,325.00
Fuel Stations		575,700.00
Grain Elevators		2,708,100.00
Storage Warehouses		276,500.00
Docks and Wharves		1,222,900.00
Gas Making Plants		15,000.00
Miscellaneous Structures		3,194,850.00
Track and Bridge Tools		142,877.00
Stores and Supplies on hand Feb. 28, 1907		5,395,463.00
Contingencies		15,259,528.00
Equipment:		
Locomotives	$10,756,324	
Passenger Cars	4,915,764	
Freight Cars and other Equipment	25,249,096	
Total Equipment		$ 40,921,184.00
		$373,339,260.00
General and Legal Expenses		3,733,392.00
		$377,072,652.00
Interest		37,707,265.00
		$414,779,917.00
Average per mile of main track		$62,511

GREAT NORTHERN RAILWAY.

COST OF REPRODUCTION OF SYSTEM.

6635.34 Miles Main and Second Tracks.
1480.24 Miles Side Tracks.
8115.58 Miles Total Tracks.

Engineering		$ 6,870,187.00
Right of Way and Station Grounds		87,067,532.00
Grading		93,098,889.00
Tunnels		7,447,620.00
Bridges, Trestles and Culverts		17,953,028.00
Ties		18,690,731.00
Rails		31,054,392.00
Track Fastenings		7,375,495.00
Frogs and Switches		904,350.00
Ballast		10,509,000.00
Tracklaying and Surfacing		6,998,409.00
Fencing Right of Way		760,815.00
Crossings, Cattle Guards and Signs		1,922,160.00
Interlocking or Signal Apparatus		386,190.00
Telegraph Lines		2,198,283.00
Station Buildings and Fixtures		3,276,300.00
Shops, Roundhouses and Turntables		3,667,900.00
Shop Machinery and Tools		1,779,692.00
Water Stations		1,983,325.00
Fuel Stations		576,700.00
Grain Elevators		2,708,100.00
Storage Warehouses		276,500.00
Docks and Wharves		1,222,900.00
Gas Making Plants		15,000.00
Miscellaneous Structures		3,194,850.00
Track and Bridge Tools		142,877.00
Stores and Supplies on hand Feb. 28, 1007		5,395,463.00
Contingencies		15,291,252.00
Equipment:		
Locomotives	$10,736,324	
Passenger Cars	4,915,764	
Freight Cars and Other Equipment	25,249,096	
Total Equipment		40,921,184.00
		$373,688,224.00
General and Legal Expenses		3,736,882.00
		377,425,106.00
Interest		37,742,510.00
		$415,167,616.00

Average per mile of main track, $62,570.00

GREAT NORTHERN RAILWAY.

STATEMENT SHOWING MILEAGE OF TRACKS OWNED BY THE DIFFERENT COMPANIES UNDER OPERATION APRIL 1, 1907.

	Main Track.	Second, Third, Fourth, Fifth and Sixth Track.	Side Tracks.
	Miles.	Miles.	Miles.
St. Paul, Minneapolis & Manitoba Ry.	3,875.93	56.66	926.16
Willmar & Sioux Falls Railway	433.41	.....	55.64
Eastern Railway Company of Minn.	501.46	50.70	206.95
Duluth Terminal Railway	1.82	.....	3.84
Duluth, Superior & Western Terminal Company to Omaha	5.28	.....	13.85
Park Rapids & Leach Lake Railway Co.	49.04	.....	8.66
Duluth, Watertown & Pacific Ry. Co.	69.84	.....	5.09
Dakota & Great Northern Ry. Co.	343.49	.....	31.61
Montana Central Railway Company	249.26	.....	56.85
Montana & Great Northern Ry. Co.	142.99	.....	8.83
Minnesota & Great Northern Ry. Co.	41.09	.....	2.61
Seattle & Montana Railroad Co.	215.99	2.26	70.64
Midland Railway Co. of Manitoba	77.01	.....	6.57
Brandon, Saskatchewan & Hudson Bay Railway Company	69.45	.....	7.22
Crows Nest Southern Railway Co.	53.20	.....	7.76
Minneapolis Union Railway Co.	2.63	2.63	4.75
Minneapolis Western Railway Co.	1.69	.....	5.20
Spokane Falls & Northern Ry. Co.	130.51	.....	21.20
Nelson & Fort Sheppard Ry. Co.	55.42	.....	3.21
Columbia & Red Mountain Ry. Co.	7.51	.....	.47
Red Mountain Railway Company	9.59	.....	3.99
Washington & Great Northern Ry. Co.	111.72	.....	15.02
Vancouver, Victoria & Eastern Ry. and Navigation Company	74.76	.....	14.12
Total	6,523.09	112.25	1,480.24
	112.25		
Total Main and Second Track	6,635.34		
	1,480.24		
Grand Total All Tracks	8,115.58		

GREAT NORTHERN RAILWAY.

MILEAGE IN OPERATION APRIL 1ST, 1907.

LAKE DISTRICT.

	Miles	
SUPERIOR DIVISION:		
Coon Creek to Superior (Main track)	134.49	
Coon Creek to Superior (Second track)	8.10	
Sandstone to Quarries	2.61	
Duluth Terminal Railway Co.	1.82	147.02
MESABI DIVISION:		
Omaha Crossing at Allouez to Saunders	5.33	
Boyleston to Cass Lake (Main track)	152.42	
Boyleston to Cass Lake (Second track)	42.60	
Mississippi River to Dewey Lake (via Hibbing)	48.42	
Chisholm to Virginia	16.96	
Commodore Mine Branch	1.69	
Kinney Hawkins Mine Branch	10.16	
Crosby Mine Branch	1.56	
Forest Mine Branch	2.49	
Stevenson Mine Aranch	3.10	
Mahoning Mine Branch	2.00	
Webb-Laura Mine Branch	1.41	
Williams Albany Mine to Pierce Jct	2.45	
Monroe Mine Branch	1.76	
Jordan Mine Branch	1.18	
Croxton Mine Branch	1.35	
Kinney Mine Branch	1.41	
South Range Line	9.69	
Stony Brook Line	46.49	352.47
Total Lake District		499.49

EASTERN DISTRICT.

TERMINALS DIVISION:		
St. Paul to west derail switch Coon Creek Jct	20.95	
State Fair Grounds Branch	.64	
Minneapolis Union Railway (Main track)	2.63	
Minneapolis Union Railway (Second track)	2.63	
Minneapolis Western Railway	1.69	
Minneapolis Jct. to Old Spring Park Jct., 0.36 miles west of Ferndale	15.28	
Old Spring Park Jct. 0.36 miles west of Ferndale to end of track at Hutchinson	43.91	
Hopkins Jct. to Hopkins	3.44	
Second, Third, Fourth, Fifth and Sixth tracks	54.34	
North "Y" Minneapolis Junction and east and west "Y" at Minneapolis Union Depot	.33	145.84

	Miles.	
ST. CLOUD AND FERGUS FALLS DIVISION:		
West derail switch Coon Creek Jct. to east switch at Barnesville	195.65	
Elk River to Milaca	31.80	
Clearwater Jct. switch in west Minneapolis to connection switch with St. Cloud and Fergus Falls main line at St. Cloud, including west "Y"	63.33	
St. Cloud to Hinckley	66.38	
East St. Cloud to Sauk Rapids	2.13	
St. Cloud to switch at Willmar (on Willmar line)	55.70	
Sauk Center to Cass Lake	140.00	
Fergus Falls to Pelican Rapids	21.65	
St. Cloud Spur to Dam	2.53	579.17
NORTHERN DIVISION:		
Barnesville to St. Vincent, including line to International Boundary	176.08	
From Junction with St. Vincent line at Carman to Cass Lake	105.85	
Moorhead Jct. to Wahpeton	42.91	
Junction with Barnesville to Grand Forks line at Moorhead to Junction with St. Vincent line at Carman	66.59	
Wylie to St. Hilaire and Red Lake Falls to Greenbush	69.52	460.95
WILLMAR DIVISION:		
From junction with Hutchinson Line, 0.36 miles west of Ferndale, to east yard limit board at Breckenridge, Minn. (Main track)	188.09	
(Second track)	2.32	
Benson Jct. to Watertown	91.62	
Duluth, Watertown & Pacific Ry.—Watertown to Huron	69.84	
Morris Jct. to Lake Traverse	48.60	400.47
BRECKENRIDGE DIVISION:		
From east yard limit board at Breckenridge to junction with Dakota main line at Larimore	173.63	
Tintah to Evansville	32.03	
Yarmouth to Rutland Junction	55.33	
Rutland Jct. to Forbes	63.10	
Rutland Jct. to Aberdeen	64.00	
Casselton to Aneta	67.72	
Aneta to Warwick	46.00	
Addison to Chaffee	11.78	513.59
Total Eastern District		2,100.02

CENTRAL DISTRICT.

	Miles.	
DAKOTA DIVISION:		
From St. Vincent Jct. at Crookston to west yard limit board Devils Lake	115.23	
Barnesville Jct. to Grand Forks Jct., including Alton Branch and M. P. connection, Fargo	107.97	
From Grand Forks Jct. to Neche	80.72	
Grafton to Walhalla	47.84	
Larimore to Hannah	94.94	
Lakota to Sarles	73.12	
Neche to International Boundary	.64	
International Boundary to Portage la Prairie, Man. (Midland Ry. Co. of Manitoba)	77.01	597.47
MINOT DIVISION:		
West yard limit board Devils Lake to west switch Williston	237.14	
Churches Ferry to International Boundary	59.09	
International Boundary to Brandon, Man. (B. S. & H. B. Ry.)	69.45	
York Branch	42.29	
Rugby Jct. to Antler	80.59	
Towner Branch	46.13	
Granville Jct. to Sherwood	61.82	
Berthold to Aurelia	15.00	611.51
MONTANA DIVISION:		
West switch at Williston to east switch at Pacific Jct.	312.34	
East switch at Pacific Jct. to west yard limit board at Cut Bank	125.23	437.57
		1,646.55

WESTERN DISTRICT.

KALISPELL DIVISION:		
West yard limit Cut Bank to west switch at Troy via Whitefish	264.16	
Rexford, Montana, to International Boundary	8.50	
International Boundary to Fernie, B. C. (Crows Nest Southern Ry. Co.)	53.20	
Columbia Falls to Lakeview	62.94	388.90
SPOKANE DIVISION:		
West switch at Troy, Montana, to west yard limit board at Leavenworth, Washington	337.31	337.31

CASCADE DIVISION:

	Miles.	
West yard limit board at Leavenworth to Seattle, Washington, including yard at Delta	149.22	
Second track at Seattle	2.25	
North headblock of "Y" south of Snohomish River bridge, Everett, Washington, to International Boundary at Blaine, Washington	81.79	
Samish Lake Spur	11.38	
Anacortes to Rockport	58.03	
International Boundary at Douglass, B. C., to end of track near South Westminster, B. C.	24.10	326.78
Total Western District		1,052.99

WILLMAR & SIOUX FALLS RAILWAY.

Willmar to center line Division Street, Sioux City, Iowa	223.76	
South Sioux City, Neb., to O'Neill, Neb.	129.16	
Garretson to Yankton	80.49	433.41

MONTANA CENTRAL RAILWAY.

South side of Sun River bridge at Great Falls to Butte	169.22	
Neihart Branch	56.24	
Sand Coulee Branch	14.53	
Cottonwood Branch	5.21	
Mountain View Branch	3.38	
Fair Grounds Branch	.68	
G. N. Ry. east switch Pacific Jct. to south side Sun River, Great Falls	121.56	
G. N. Ry. west side branch, Great Falls	5.04	
G. N. Ry. Johnstown Jct. to Sand Coulee Jct., Great Falls	3.10	
M. & G. N. Ry. Willard to Sweet Grass	134.41	513.37

SPOKANE FALLS & NORTHERN RY. SYSTEM.

SPOKANE FALLS & NORTHERN RY.:		
Spokane to Hillyard	4.30	
From connection with G. N. Ry. at Colbert to International Boundary	126.21	
NELSON & FORT SHEPPARD RY.:		
From International Boundary to Troupe Jct., B. C.	55.42	
COLUMBIA & RED MOUNTAIN RY.:		
From junction with S. F. & N. Ry. near Northport to International Boundary	7.51	
RED MOUNTAIN RAILWAY:		
International Boundary to Rossland, B. C.	9.59	

WASHINGTON & GREAT NORTHERN RY. AND VANCOUVER, VICTORIA & EASTERN RAILWAY AND NAVIGATION CO.:

From Marcus, Wash., to Republic, Wash., including Eureka Gulch Branch	69.38	
From boundary at Laurier to boundary at Danville, including branch to Grand Forks, B. C.	16.50	
Granby Smelter Branch	4.75	
Phoenix Line	24.62	
Curlew to Molson	43.41	
Molson to Oroville	27.82	389.51

SUMMARY.

	Miles.
Lake District	499.49
Eastern District	2,100.02
Central District	1,645.55
Western District	1,052.99
Willmar & Sioux Falls Ry	433.41
Montana Central Railway	513.37
Spokane Falls & Northern System	389.51
Total main and second tracks	6,635.34
Side tracks	1,480.24
Grand total main tracks, second tracks and side tracks	8,115.58

ENGINEERING.

Estimated at 3% of all construction items requiring Engineering supervision, being all items except
Right of way and Station Grounds
Track and Bridge Tools
Stores and Supplies on hand
Equipment
General and Legal Enpenses
Interest

3% of $229,006,222 ..... $6,870,187.00

RIGHT OF WAY AND STATION GROUNDS.

Right of Way and Station Grounds, as per schedule prepared by the Right of Way Department.

GRADING.

27,018 acres clearing	at	82.50	$ 2,228,985.00
340,000 sq. rods grubbing		1.65	561,000.00
165,438,650 cu. yds. earth		.31	51,285,982.00
33,973,350 cu. yds. hard pan		.45	15,288,008.00
8,441,860 cu. yds. loose rock		.55	4,643,023.00
12,771,060 cu. yds. solid rock		1.10	14,048,166.00
1,765,675 cu. yds. riprap		2.00	3,531,350.00
92,500 cu. yds. retaining wall		9.00	832,500.00
194,250 cu. yds. slope wall		3.50	679,875.00
			$93,098,889.00

Average per mile of main track, $14,031.00.

The quantities of grading were arrived at as follows: For 82% of the mileage of the system the actual quantities moved in construction were obtained from Engineering Department records. For the balance of the system the quantities could not be obtained in that way, because no records are available, and they were estimated from profiles and by comparison with adjacent portions of the system where the quantities were known.

To these quantities were added the quantities moved since construction in widening banks, reducing grades, taking out sags, filling bridges and widening and sloping cuts. The result being the actual quantities, as nearly as possible to arrive at same, required to make the roadbed as it exists today. The averages are as follows:

LINES EAST OF HAVRE.

4553.05 miles main track.
1034.76 miles side track.
5587.81 miles total.

Earth.	Hard Pan.	Loose Rock.	Solid Rock.	Total.
111,750,360	12,878,800	1,465,000	322,200	125,416,360
88.4%	10.2%	1.1%	0.3%	

Average cu. yds. per mile main track, 27,760 cu. yds.

LINES WEST OF HAVRE.

2082.29 miles main track.
445.48 miles side track.
2527.77 miles total.

53,688,290	21,094,550	6,976,860	12,448,860	94,208,560
57.0%	22.4%	7.4%	13.2%	

Average cu. yds. per mile main track, 45,250

ENTIRE SYSTEM.

6635.34 miles main track.
1480.24 miles side track.
8115.58 miles total.

165,438,650	33,973,350	8,441,860	12,771,060	220,614,920
75.0%	15.4%	3.8%	5.8%	

Average cu. yds. per mile main track, 33,250.

Prices cover all overhaul and transportation of materials, laborers, outfits, tools, machinery, powder and supplies, and were arrived at as follows:

CLEARING.

Average contract price	75.00	per acre.
Transportation men, tools, supplies	7.50	"
	82.50	"

GRUBBING.

Average contract price	1.50	per sq. rod.
Transportation men, tools, supplies	.15	"
	1.65	"

EARTH.

Average contract price up to 1,000 '. haul	.23	per cu. yd.
Average overhaul	.03½	"
Transportation men, tools, supplies	.04½	"
	.31	"

HARD PAN.

Average contract price up to 1,000 '. haul	.35	per cu. yd.
Average overhaul	.04½	"
Transportation men, tools, powder, supplies	.05½	"
	.45	"

LOOSE ROCK.

Average contract price up to 1,000 '. haul	.45	per cu. yd.
Average overhaul	.04½	"
Transportation men, tools, powder, supplies	.05½	"
	.55	"

SOLID ROCK.

Average contract price up to 1,000 '. haul	1.00	cu. yd.
Average overhaul	.04½	"
Transportation men, tools, powder, supplies	.05½	"
	1.10	"

RIPRAP.

Average contract price	1.50	cu. yd.
Overhaul or train service	.35	"
Transportation men, tools, powder, supplies	.15	"
	2.00	"

RETAINING WALL.

Average contract price for concrete or heavy rubble masonry	7.50	cu. yd.
Train service	.80	"
Transportation men, tools, supplies	.70	"
	9.00	"

SLOPE WALL.

Average contract price	2.50	cu. yd.
Train service	.75	"
Transportation men, tools, supplies	.25	"
	3.50	"

TUNNELS.

5,232	Lin. ft. unlined single track tunnel	70.00	$ 366,240.00
17,346	Lin. ft. timber lined single track tunnel	120.00	2,081,520.00
19,952	Lin. ft. concrete or masonry lined single track tunnel:		
	Boulder, 6,139 ′	175.00	1,074,325.00
	Cascade, 13,813 ′	195.00	2,693,535.00
5,141	Lin. ft. concrete lined double track tunnel (Seattle), $1,848,000. 2/3 to G. N.		1,232,000.00
	Total		$7,447,620.00

Prices were arrived at as follows:

Unlined single track tunnel, contract price for standard unlined section	$ 55.00	lin. ft.
Extra excavation	8.00	"
Transportation men, tools, machinery, powder	7.00	"
	$ 70.00	"
Timber lined single track tunnel:		
Contract price for standard unlined section	$55.00	lin. ft.
Enlargement for timber	30.00	"
Timber, iron in place	25.00	"
Transportation men, tools, materials, machinery, powder, supplies	10.00	"
	$120.00	"
Concrete or masonry lined single track tunnels. Boulder tunnel 6,139 ′. long:		
Excavation	$ 90.00	lin. ft.
Temporary timber lining	20.00	"
Permanent masonry lining	45.00	"
Transportation of men, tools, machinery, materials, powder, etc	20.00	"
	$175.00	"
Cascade Tunnel, 13,813 ′. long:		
Excavation	$ 95.00	lin. ft.
Temporary timber lining	25.00	"
Permanent concrete lining	50.00	"
Transportation of men, tools, machinery, materials, powder, etc	25.00	"
	$195.00	"

Double track concrete lined tunnel at Seattle, 5,141 ′. long, constructed during 1904-05.

Amount shown is actual cost.

BRIDGES, TRESTLES AND CULVERTS.

	No.	Length	Cost to Reproduce.
Stone arch, Minneapolis	1	1,770′	$ 867,000.00
Steel bridges with masonry	260	63,557′	6,941,645.00
Timber trestles	3934	429,851′	5,216,480.00
Howe truss spans	189	19,996′	905,478.00
Permanent culverts	4940		3,021,685.00
Timber culverts	4021		1,000,740.00
Total bridges, trestles and culverts			$17,953,028.00

OVERHEAD HIGHWAY BRIDGES.

(Included under "Crossings, Cattle Guards and Signs.")

STEEL AND MASONRY:		
St. Paul	16	
Minneapolis	32	
Duluth	1	
Superior	2	
Spokane	2	
Everett	3	
Seattle	2	1,344,000.00
Timber over-head bridges		80,510.00
		1,424,510.00

Unit prices used in above estimates of cost:

STEEL:	
F. O. B., St. Paul	$65.00 per ton
Mill and Shop Inspection	.75 per ton
Erection	12.00 per ton
Painting	2.25 per ton
	$80.00 per ton

Freight .005 per ton per mile.

MASONRY:	
1st class	$12.00 per yard
2nd class	8.00 per yard
Concrete	6.00 per yard
Excavation, pumping, coffer dams, etc	Variable

Freight .005 per ton per mile.

TRESTLE BRIDGES:	
Timber	$31.50 per M in place
Piling	.35 per ft. in place
Wrot Iron	.05 per lb. in place
Cast Iron	.05 per lb. in place

Freight .005 per ton per mile.

BRIDGES, TRESTLES AND CULVERTS—CONTINUED.

HOWE TRUSS SPANS:

44′	$18.50 per lin. ft.
60′	27.00 per lin. ft.
75′	34.00 per lin. ft.
87½′	35.00 per lin. ft.
100′	37.50 per lin. ft.
125′	42.00 per lin. ft.
150′	45.00 per lin. ft.

Howe truss, Av.	$25.00 per M
Rods, Plates, etc.	.03 per lb.
Bolts	.02½ per lb.

Freight .005 per ton per mile.

SEWER PIPE PER FOOT.

12 inch	$0
18 inch	0
24 inch	1
27 inch	1

CAST PIPE.

$30.00 per net ton.

Freight, Sewer Pipe, $0.005 per ton per mile.
Freight, Cast Pipe, $0.005 per ton per mile.

TIES.

6635.34 miles at 2850		18,910
1480.24 miles at 2750		3,070
8115.58		21,981
Average price delivered on right of way		.48
Train service and labor loading and handling		.09
Treating one fourth of whole amount	.16	.04
Transportation average 500 miles	5/10c	.21
		.82
21,981,379 at .82		$18,024,731
8880 sets switch ties:		
Average cost per set at mills	$60.00	
Transp. 5/10c. ton mile:		
Average 500 miles	15.00	
	$75.00	
8880 sets at 75.00		666,000
		$18,690,731

RAILS.

Main track average 68.1 lb. per yard...107 per mile
Side track average 60 lb. per yard... 94 2/7 per mile
6635.34 miles main track at 107 tons.....709,981 tons
1480.24 miles side track at 94-2/7 tons.....139,565 tons
Add 5 rails per mile for repair rails:
6635.34 x 5 33178 rails, 103.7 miles, 68.1 lb.
at 107 tons per mile..... 11,096 tons
1480.24 x 5 7401 rails, 21.0 miles, 60 lb.
at 94–2/7 tons per mile..... 1,980 tons

862,622 tons

One Ton

F. O. B., St. Paul, including handling.....$32.00
Transp. Avg. 800 miles 5/10c. T. M..... 4.00

$36.00
862,622 tons at $36.00.....$31,054,392.00

TRACK FASTENINGS.

ANGLE BARS:

6635.34 mi., 17,600 lbs., 8.8 tons.....	58,391	
1480.24 mi., 13,700 lbs., 6.85 tons.....	10,140	
	68,531	
Add for short rails and switches, block rail	1,713	
	70,244	
One ton		
F. O. B. St. Paul including handling.....	$40	
Transp. Avg. 800 mi. 5/10c. T. M.....	4	
	$44	
70,244 tons at $44.....		$3,090,736.00

BOLTS AND NUTS:

6635.34 mi., 1,800 lbs., 0.9 ton.....	5,972	
1480.24 mi., 1,500 lbs., 0.75 ton.....	1,110	
	7,082	
Add for short rails, switches, etc.....	354	
	7,436	
One ton		
F. O. B. St. Paul, including handling.....	$54	
Transp. 800 mi. 5/10c. T. M.....	4	
	$58	
7,436 tons at $58.00.....		$431,288.00

TRACK FASTENINGS—CONTINUED.

SPIKES:

6,635.34 Miles
1,480.24 Miles

8,115.58 Miles, 6,500 lbs., 3.25 ton..... 26,376
Add for switches, etc..... 1,978
28,354

One ton

F. O. B. St. Paul, including handling.....	$42	
Transp. Avg. 800 Mi. 5/10c. T. M.....	4	
	$46	
28,354 tons at $46.....		$1,304,284.00

TIE PLATES:

2,450 Mi. full tie plated:
1,950 Mi. half tie plated:
2,450 Mi. at 14.5 T..... 35,525 tons
1,960 Mi. at 7.25..... 13,438 tons
48,963 tons

One ton.

F. O. B. St. Paul.....	$45	
Transp. 5/10c.....	4	
	$49	
48,963 tons at $49.....		$2,399,187.00

RAIL BRACES: (Not including switches and guard rails)
750 Miles of track at 2,000 per mile..... 1,500,000
at 10c. each, including transportation..... $1,500,000.00

SUMMARY OF TRACK FASTENINGS.

Angle Bars.....	$3,090,736.00
Bolts and Nuts.....	431,288.00
Spikes.....	1,304,284.00
Tie Plates.....	2,399,187.00
Rail Braces (not including switches and guard rail).....	150,000.00
Total.....	$7,375,495.00

FROGS AND SWITCHES.

Average price at St. Paul of one set including switch stand and bolts, lamp, switch points, connecting and tie rods, plates, braces, clips, frog and guard rail.....	$85.00	
Transportation charges, 800 Mi. 5/10c. T. M..	7.50	
8,880 complete turnouts (except ties).....	$92.50	$821,400.00
302 crossing frogs, complete with timber, including transportation.....	275.00	83,050.00
Total.....		$904,450.00

Ballast.

6635.34 Miles main track, 3750 miles have average of 3000 C. Y. per mile and 1900 miles have average of 2250 C. Y. 1480.24 miles side tracks, 950 miles have average of 1500 C. Y. per mile.

3750 Miles at 3000	11,250,000
1900 Miles at 2250	4,275,000
950 Miles at 1500	1,425,000
	16,950,000

AVERAGE PRICE PER C. Y.:

Cost of loading, unloading, putting under track and dressing track	.27
Cost of Steam Shovels, maintenance and repairs of same	.05
Train service, hauling, repairs and rental of equipment, transportation of men, tools and supplies	.30
	.62
16,950,000 C. Y. at .62	$10,509,000.00

Tracklaying and Surfacing.

6635.34 Miles.
1480.24 Miles.

8115.58 Miles.

COST OF HANDLING MATERIALS:

Curving rails, laying and surfacing track	$350.00 per Mile
Tie plating (average)	45.00 per Mile
Train service and rental of equipment, and hauling to front	390.00 per Mile
Transportation of men and outfits, tools and supplies	50.00 per Mile
	$835.00 per Mile

8115.58 Miles at $835.00	$6,776,409.00
8880 Switches at $25.00	220,000.00
Total	$6,998,409.00

Right of Way Fences.

4611 Miles, total at $165	$760,815.00

COST PER MILE:

Standard right of way fence	$150.00
Train service distributing material	10.00
Transportation on material and labor and tools	5.00
	$165.00

CROSSINGS, CATTLE GUARDS AND SIGNS.

Estimated at $75 per Mile for main track, 6635.34 Miles at $75.00	$497,650.00

OVER-HEAD BRIDGES:

Steel	$1,344,000.00
Wood	80,500.00
Total	$1,922,160.00

See details on statement of bridges, trestles and culverts.

INTERLOCKING OR SIGNAL APPARATUS.

Cost to reproduce interlocking	$327,750.00
Cost to reproduce block signaling	58,440.00
Total	$386,190.00

Transportation charges included.

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ESTIMATED COST OF CONSTRUCTION OF TELEGRAPH POLE LINE CONSISTING OF POLES, CROSS ARMS, PINS, GLASS, WIRE, ETC.

	Labor.	Material.	Train Service.	Trans, chgs. men, tools, outfits, material.	Total.
Lake District	$ 31,148.00	$ 72,793.00	$ 1,206.00	$ 14,558.60	$ 119,705.60
Terminals Division	12,950.00	38,223.50	105.00	3,664.85	54,943.35
Fergus Falls Division	83,520.00	230,665.20	1,566.00	22,751.52	338,502.72
Willmar Division	60,900.00	88,521.80	1,215.00	17,704.36	168,341.16
Willmar & Sioux Falls Ry	35,101.00	74,143.00	1,303.80	14,828.60	125,376.40
Breckenridge Division	36,380.00	75,059.60	1,391.70	14,489.92	127,321.22
Northern Division	40,318.20	83,339.12	1,311.00	16,181.12	141,119.44
Dakota Division	55,419.86	152,137.92	1,328.70	29,203.93	238,090.41
Minot Division	42,335.68	91,351.94	1,007.40	15,633.14	150,328.16
Montana Division	44,031.00	100,400.20	1,313.40	20,800.04	166,544.64
Montana Cent. Ry	36,266.12	49,821.06	585.00	10,034.62	86,706.80
Kalispell Division	46,383.82	64,657.56	1,056.00	6,055.37	118,152.75
Spokane Division	43,810.00	65,505.90	1,011.00	13,101.18	123,428.08
Cascade Division	38,917.00	56,172.88	923.10	11,234.57	107,247.55
Spokane Falls & Northern System	37,838.46	45,587.37	872.10	7,990.91	92,288.84
Midland Railway of Manitoba	3,127.20	5,079.48	234.60	1,015.90	9,457.18
Brand. Saskatchewan & Hudson Bay Ry	2,168.14	1,747.93	208.20	349.59	4,473.86
	$ 650,614.48	$1,295,207.46	$ 16,638.00	$ 219,598.22	$2,182,058.16

Estimated value of quadruplex, instruments, batteries, furniture, etc.:

St. Paul General Telegraph Office	$4,210.00	
Willmar Wire Testing Office	1,080.00	
Grand Forks Relay	2,170.00	
Minot Relay Office	2,400.00	
Havre Relay Office	2,350.00	
Whitefish Wire Testing Office	1,460.00	
Spokane Relay Office	1,520.00	
Seattle Relay Office	1,035.00	$16,225.00
		$2,198,283.16

STATION BUILDINGS AND FIXTURES.

PASSENGER DEPOTS (BRICK AND STONE).

St. Paul Union Depot (one-ninth interest included in right of way and station grounds).	
Hamiline	$ 3,000.00
Minneapolis Union Depot	342,500.00
Wayzata	11,100.00
Litchfield (Combination passenger and freight)	17,100.00
Willmar	17,500.00
Benson (Combination passenger and freight)	22,800.00
Morris (Combination passenger and freight)	5,600.00
Breckenridge	19,300.00
Sioux Falls	17,300.00
Sioux City	180,000.00
Aberdeen (Combination passenger and freight)	25,300.00
Ellendale (Combination passenger and freight)	10,800.00
Huron	8,500.00
Anoka (Combination passenger and freight)	7,000.00
St. Cloud	21,800.00
Sauk Center (Combination passenger and freight)	7,000.00
Alexandria	20,400.00
Fergus Falls (Combination passenger and freight)	12,700.00
Barnesville	11,200.00
Moorhead	7,500.00
Crookston (Combination passenger and freight)	21,600.00
Princeton (Combination passenger and freight)	16,000.00
Superior (one-third interest included in right of way and station grounds).	
Fargo	41,800.00
Grand Forks	37,500.00
Mayville (Combination passenger and freight)	4,800.00
Grafton (Combination passenger and freight)	7,500.00
Larimore (Combination passenger and freight)	17,300.00
Devils Lake	25,900.00
Rugby	21,000.00
Minot	19,800.00
Glasgow (Combination passenger and freight)	10,900.00
Kalispell	10,400.00
Spokane	137,500.00
Bellingham	18,400.00
Seattle (½ interest)	295,000.00
	$1,453,900.00
705 Frame Passenger or Combination passenger and freight depots	$1,226,700.00

STATION BUILDINGS AND FIXTURES—CONTINUED.

FREIGHTS DEPOTS (BRICK AND STONE).

St. Paul (2)	$ 79,000.00
Minneapolis (2)	62,000.00
Sioux City (2)	42,400.00
Superior	27,000.00
Duluth	11,200.00
Moorhead	4,000.00
Fargo	18,200.00
Grand Forks	19,800.00
Minot	17,000.00
Havre	6,000.00
Great Falls	22,100.00
Spokane	22,500.00
Everett	11,700.00
Seattle (2)	80,000.00
	$422,900.00
Frame freight houses	$172,800.00

SUMMARY.

Passenger depots, brick and stone	$1,453,900.00
Freight depots, brick and stone	422,900.00
705 Frame passenger or combination passenger and freight depots	1,226,700.00
Frame freight houses	172,800.00
Total	$3,276,300.00

Transportation charges included in each item for men, materials, tools, etc.

Freight transportation figured at .005 per ton mile.

910w

Shops, Roundhouses and Turntables.

SHOPS.

St. Paul	$854,400.00
St. Cloud	75,400.00
Superior	91,000.00
Barnesville	17,500.00
Sioux City	12,500.00
Devils Lake	60,000.00
Havre	91,000.00
Great Falls	42,000.00
Spokane	124,800.00
Everett	70,200.00
(Above does not include Roundhouses, Turntables, Cinder Pits, Water Tanks and Coal Chutes.)	
Frame roundhouses, 88 stalls at $1,400	123,200.00
Brick, stone and concrete roundhouses, 554 stalls, at $2,100	1,163,500.00
Boiler houses, power houses and small shops, not included above	216,000.00
Turntables, frame, 10, at $1,800	18,000.00
Turntables, Steel or Iron, 57, at $6,500	370,500.00
Cinder pits	140,000.00
Store houses, oil houses and sand houses and scrap bins (other than those included in shop buildings above)	198,000.00
Total	$3,667,900.00

Transportation charges included in each item for men, tools, materials, etc.

Freight transportation figured at .005 per ton mile.

Water Stations.

420 Water stations, including tanks, pump houses, pumps, engines, windmills, standpipes, wells, reservoirs and all appurtenances of water stations for supplying locomotives with water (Average $4,722 each)	$1,983,325.00

Transportation charges included.

Fuel Stations.

55 Standard coaling stations complete at $9,500	$544,500.00
52 Platforms coaling stations, portion with cranes and buckets, at $600	31,200.00
Total	$ 575,700.00

Transportation charges included.

Shop Machinery and Tools.

Roundhouse machinery and tools	$ 268,864.00
Repair shop machinery and tools	1,510,828.00
Total	$1,779,692.00

Includes cost of machinery, tools, transportation, foundations and placing same.

Freight transportation figured at .005 per ton mile.

GRAIN ELEVATORS.

Minneapolis	$ 240,000.00
Superior A & X	823,100.00
Superior S (Steel)	1,536,400.00
Seattle, Smith's Cove	108,600.00
Total	$2,708,100.00

Land value not included.
Transportation charges included.

STORAGE WAREHOUSES.

Flour shed, Superior	$142,800.00
Wool warehouses: Armington, Great Falls, Big Sandy, Chinook, Benton	19,800.00
Warehouse Smith's Cove Dock	113,900.00
Total	$276,500.00

Land value not included.
Transportation charges included.

DOCKS AND WHARVES.

Superior, No. 1, including dredging	$175,000.00
Superior, No. 2, including dredging	80,800.00
Superior, Nos. 5 and 6, including dredging and machinery	449,500.00
Seattle, Smith's Cove dock, including dredging	517,600.00
Total	$1,222,900.00

Land value not included.
Transportation charges included.

MISCELLANEOUS STRUCTURES.

General office building and equipment, St. Paul	$590,000
Division office buildings, not otherwise included	18,000
Boarding houses, eating houses	87,500
Section houses, bunk houses, hand-car houses	853,500
Ice houses	107,500
Stock yards	157,600
Track scales	92,250
Snow sheds	295,000
Fences, snow	450,000
Loading platforms	71,000
Stone quarry and crusher plants	45,000
Tie treating plant	85,000
Commissary buildings	15,000
Miscellaneous buildings	327,500
	$3,194,850

Transportation charges included in each item.

TRACK AND BRIDGE TOOLS.

Cost of Sectionmen's and Bridge Carpenters' tools, hand cars and push cars	$142,877.00

STORES AND SUPPLIES ON HAND.

Cost of stock of general material carried by Storekeepers on the system, Feb. 28, 1907	$5,395,463.00

CONTINGENCIES.

10% of the following items:

Grading	$93,098,889.00
Tunnels	7,447,620.00
Bridges, trestles and culverts	17,953,028.00
Ballast	10,509,000.00
Tracklaying and surfacing	6,998,409.00
Station buildings and fixtures	3,276,300.00
Shops, roundhouses and turntables	3,667,900.00
Water stations	1,983,325.00
Fuel stations	575,700.00
Grain elevators	2,708,100.00
Storage warehouses	276,500.00
Docks and wharves	1,222,900.00
Miscellaneous structures	3,194,850.00
	$152,912,521.00
10%	$ 15,291,252.00

To cover the increased cost of the work due to all unforseen causes, such as fires, floods, tornadoes, accidents, etc.

EQUIPMENT.

Cost of locomotives, passenger cars (including passenger coaches, sleeping, dining, buffet, observation, official, baggage, express, postal and combination cars), freight cars of all descriptions, steam shovels, pile drivers, wrecking cranes, rotary snow plows and all other cars. Cost as furnished by the Accounting Department.

Locomotives	$10,756,324.00
Passenger cars	4,915,764.00
Freight cars and all other equipment	25,249,096.00
	$40,921,184.00

General and Legal Expenses.

To cover organization expenses, expenses incurred in disposal of securities, purchase of materials and equipment, salaries and expenses of general offices, clerks, etc., engaged in construction work or construction accounts, attorneys' salaries, fees and expenses and all incidental legal expenses incurred during construction.

Estimated at 1% of all items except interest.

Interest.

Estimated that the entire amount of money required to reproduce the system and equipment will be unproductive for a period of two years. It is assumed that the system can be reproduced in 8 years, or at the rate of 1000 miles of main and sidetrack per year, and that about $50,000,000 would have to be raised each year. It would be two years after the beginning of work before the first 1000 miles would produce revenue sufficient to pay interest on the investment, and so on with each 1000 miles built each succeeding year; so that by the time the system was completed and all earning revenue, interest would have been paid out of the money raised for construction on the entire amount for a period of two years.

Assumed rate of interest, 5%; for two years, 10%.

APPENDIX "H," PAGE 368.

U. P. R. R.
O. S. L. R. R.
O. R. & N. Co.

UNION PACIFIC SYSTEM.

Statement showing the average rate per ton per mile received on Lumber, Coal and Ore for the fiscal years ending June 30, 1904, 1905, 1906, 1907 and 1908.

Also showing the average loading of Hops, Hides, Wool and Canned Goods.

Average rate per ton per mile (cents):

Fiscal years.....	1904	1905	1906	1907	1908
Lumber.....	0.658	0.659	0.595	0.624	0.730
Coal (Bit.).....	.572	.551	.554	.627	.662
Ore.....	.647	.601	.610	.644	.663

Average Load per car, in tons, of:

	Hops	Hides	Wool	Canned Goods
Dec., 1908.....	10	....	....	....
Apr., 1909.....	....	....	16	19
May, 1909.....	....	22	....	....

In the month for which the loading is given for each commodity the movement of that commodity was very large.

ERASTUS YOUNG,
General Auditor.

Omaha, Neb., June 19th, 1909.

Volume III.

(TESTIMONY.)

71922

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 451.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 30, 1910.

IN THE

Circuit Court of the United States.

FOR THE DISTRICT OF MINNESOTA,

THIRD DIVISION.

UNION PACIFIC RAILROAD CO., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., and Oregon and California Railroad Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 883.

NORTHERN PACIFIC RAILWAY CO., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., and Oregon Railroad and Navigation Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 884.

GREAT NORTHERN RAILWAY CO., Northern Pacific Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., and Southern Pacific Co., Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 885.

HON. FREDERICK N. DICKSON, Master.

TRANSCRIPT OF RECORD.

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IN THE

Circuit Court of the United States.

FOR THE DISTRICT OF MINNESOTA,
THIRD DIVISION.

UNION PACIFIC RAILROAD COMPANY, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, and Oregon and California Railroad Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 884.
GREAT NORTHERN RAILWAY COMPANY, Northern Pacific Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, Complainants, v. THE INTERSTATE COMMERCE COMMISSION, Defendant.	In Equity. No. 885.

STIPULATION.

"In addition to the stipulation entered into at St. Paul con-

cerning the printing of the record in the cases before the Interstate Commerce Commission the following supplementary agreement subject to the objections heretofore made as to the admissibility of testimony, is hereby entered into between counsel for the respective parties, as follows, to-wit:

1. The printed abstract of the oral testimony fairly presents the substance of all that character of testimony offered before the Interstate Commerce Commission on the hearing before it of these cases, and the printed abstract fairly presents the selected exhibits or the substance thereof presented to said Commission on said hearing.

2. The other exhibits presented on the hearing aforesaid or reports and documents on file with the Commission or referred to on the hearing before said Commission in said cases may be considered by the master and used by either party hereto on the hearing before him without the printing thereof.

3. Either of the parties hereto may print and file with the master or the court such portions thereof as counsel may deem material, but if the same be not printed for the hearing before the master no rights to use the same as evidence or rights to print the same for the use of the court thereafter are waived.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.

LUTHER M. WALTER,
JOSEPH N. TEAL,
WILLIAM A. WIMBISH,
Solicitors for Defendant."

December 4, 1909.

ABSTRACT OF EVIDENCE TAKEN BEFORE INTERSTATE COMMERCE COMMISSION IN DOCKET

No. 1327.

Oregon & Washington Lumber Manufacturers' Association *et al.*

vs.

Union Pacific Railroad Company *et al.*

No. 1329.

Pacific Coast Lumber Manufacturers' Association *et al.*

vs.

Northern Pacific Railway Company *et al.*

No. 1335.

Southwest Washington Lumber Manufacturers' Association

vs.

Northern Pacific Railway Company *et al.*

No. 1348.

Potlatch Lumber Company *et al.*

vs.

Northern Pacific Railway Company *et al.*

EVIDENCE FOR COMPLAINANTS.

LEW ANDERSON:

I reside in the City of Portland, Oregon; have been engaged in railroad work for the past 23 years. Engaged largely in traffic work, the handling of rates and divisions for ten or twelve years.

I prepared this map for the use of the Commission. The statements on the bottom relate to the various groupings under the lumber tariff to Denver, Salt Lake City, Kansas City, Omaha, Chicago, St. Paul and St. Louis under the old and the new bases. The statement in black shows the distance from Portland to the points which I just mentioned, with the rate in cents per hundred, and in mills per ton per mile, on both the old and the new basis. The green has reference to

the 40 cent territory under the old cancelled tariff, and the black figures thereon show the old rate; and the red figures show the new rate; the 40 cent basis being divided up under the new tariff.

There is a series of figures along here that show a gradual raise of rates along the Northern Pacific. As far back as 1889 we had a 40 cent rate on fir lumber from Portland into the Denver territory. I have a table showing a history of those rates.

(Table received in evidence marked "Anderson Exhibit 1," record page 55.)

ANDERSON EX. 1.

History of Fir Lumber Rate.

Colorado and Missouri River Points.

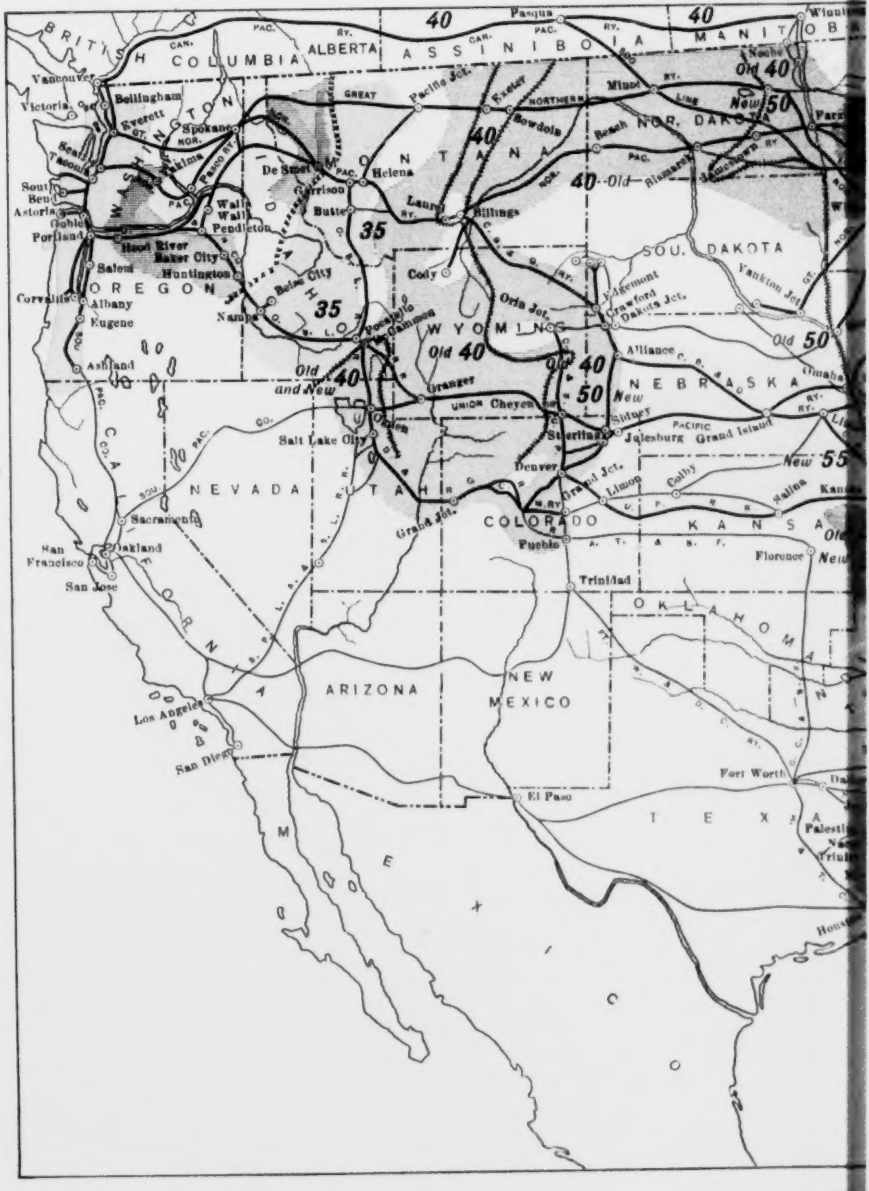
As far back as February 8, 1889, there was a 40 cent rate in effect from Portland, East Portland and Albina to Denver, Colorado, Pueblo, Colorado, and points on the Union Pacific west thereof and intermediate thereto. This rate continued throughout the year 1889, but was withdrawn at the beginning of the year 1890 and did not go into effect again until December 10, 1892, since which time it has been in effect.

A 45 cent rate was installed in April, 1893, between Portland, East Portland and Albina and Omaha, Nebraska, as well as the stations on the main line of the Union Pacific in Nebraska. The application of the rate was broadened in December, 1894, making it apply from Spokane and various points in the State of Washington, as well as from Portland, East Portland, and Albina. This application and rate remained in effect until April, 1901, or for a period of eight years. It was superseded by a 50 cent rate, which has remained in effect until the cancellation of Tariff I. C. C. 564 on November 1, 1907.

The carload minimum rates in 1889 were 20,000 pounds. In December, 1892, these minimums were raised on fir lumber from 20,000 pounds to 24,000 pounds and in March, 1897, they were put on the following basis:

Cars 30 ft. or less, 20,000 pounds;
Over 30 ft. to and including 34 ft., 24,000 pounds;
Over 34 ft., 30,000 pounds.

In October, 1902, by Supplement 8 to O. R. & N. Tariff 158


BRITISH COLUMBIA
ALBERTA
ASSINIBOIA
MANITOBA
WASHINGTON
OREGON
MONTANA
NORTH DAKOTA
SOUTH DAKOTA
WYOMING
NEBRASKA
NEVADA
UTAH
COLORADO
KANSAS
OKLAHOMA
ARIZONA
NEW MEXICO
TEXAS
Vancouver
Victoria
Bellingham
Everett
Spokane
Seattle
Tacoma
Yakima
Portland
Salem
Albany
Eugene
Corvallis
Astoria
Hood River
Baker City
Huntington
Pendleton
Wall Walla
Baker City
Nampa
Boise
Ashland
Klamath Falls
Sacramento
San Francisco
Oakland
San Jose
Los Angeles
San Diego
Salt Lake City
Ogden
Provo
Green River
Granger
Cheyenne
Denver
Grand Jct.
Pueblo
Trinidad
Colby
Limon
Sidney
Alliance
Julesburg
Grand Island
Omaha
Florence
Fort Worth
El Paso
Houston
Palestine
Trinity
Helena
Butte
Missoula
Bozeman
Billings
Laurel
Miles City
Glendive
Bismarck
Minot
Devils Lake
Fargo
Grand Forks
Pasqua
Moosejaw
Regina
Brandon
Winnipeg
Portal
Noonan
Dickinson
Mandan
Valley City
Jamestown
Aberdeen
Watertown
Huron
Yankton
Sioux City
Sioux Falls
Pierre
Rapid City
Deadwood
Lead
Hot Springs
Edgemont
Crawford
Dakota Jct.
Orin Jct.
Cody
Casper
Rawlins
Laramie
Cheyenne
Greeley
Fort Collins
Boulder
Colorado Springs
Pueblo
Canon City
Leadville
Glenwood Springs
Grand Jct.
Montrose
Durango
Salina
Kansas City
Topeka
Wichita
Hutchinson
Dodge City
Garden City
Liberal
Amarillo
Childress
Wichita Falls
Abilene
Waco
Austin
Houston
Galveston
Dallas
Fort Worth
Denison
Sherman
Texarkana
Shreveport
Monroe
Vicksburg
Jackson
New Orleans
Baton Rouge
Lake Charles
Beaumont
Port Arthur
Corpus Christi
Brownsville
Laredo
San Antonio
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Eagle Pass
Presidio
Marfa
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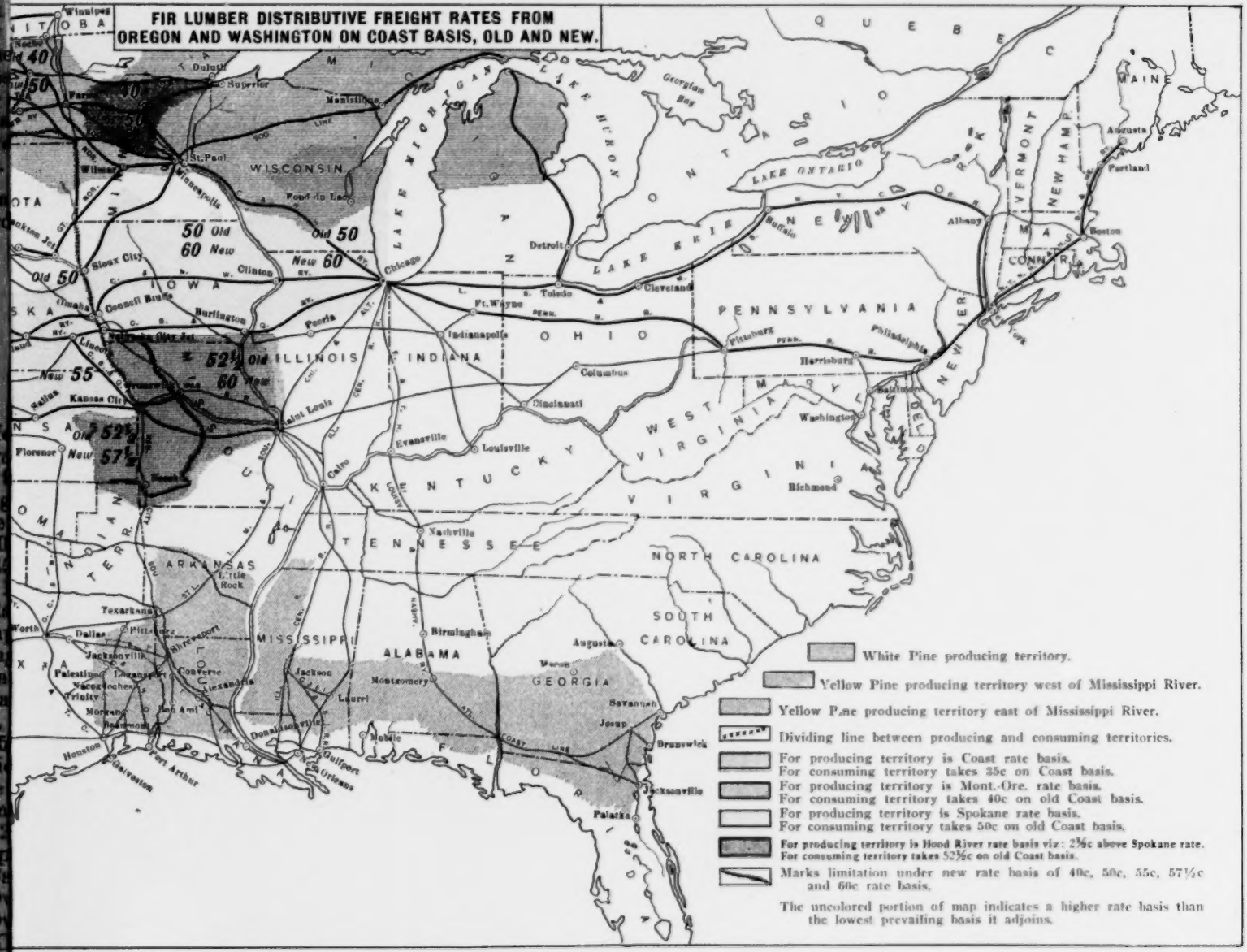
Pecos
Big Spring
Sweetwater
Abilene
Temple
Bryan
Navasota
Hearne
Palestine
Tyler
Longview
Marshall
Texarkana
Hope
Little Rock
Pine Bluff
Memphis
Jonesboro
Blytheville
Paragould
Cairo
Poplar Bluff
Cape Girardeau
St. Louis
Alton
Springfield
Joplin
Kansas City
St. Joseph
Atchison
Leavenworth
Lincoln
Hastings
Kearney
North Platte
Grand Island
Omaha
Council Bluffs
Sioux City
Fremont
Norfolk
Wayne
Sioux Falls
Mitchell
Chamberlain
Pierre
Huron
Aberdeen
Watertown
Sisseton
Wahpeton
Fargo
Grand Forks
Devils Lake
Minot
Williston
Glendive
Miles City
Billings
Bozeman
Butte
Helena
Missoula
Kalispell
Great Falls
Havre
Shelby
Cut Bank
Conrad
Chester
Scobey
Wolf Point
Glasgow
Malta
Harlem
Fort Benton
Lewistown
Winnett
Roundup
Forsyth
Hysham
Custer
Hardin
Crow Agency
Lodge Grass
Sheridan
Buffalo
Gillette
Moorcroft
Newcastle
Hot Springs
Edgemont
Crawford
Dakota Jct.
Orin Jct.
Cody
Casper
Rawlins
Laramie
Cheyenne
Greeley
Fort Collins
Boulder
Colorado Springs
Pueblo
Canon City
Leadville
Glenwood Springs
Grand Jct.
Montrose
Durango
Salina
Kansas City
Topeka
Wichita
Hutchinson
Dodge City
Garden City
Liberal
Amarillo
Childress
Wichita Falls
Abilene
Waco
Austin
Houston
Galveston
Dallas
Fort Worth
Denison
Sherman
Texarkana
Shreveport
Monroe
Vicksburg
Jackson
New Orleans
Baton Rouge
Lake Charles
Beaumont
Port Arthur
Corpus Christi
Brownsville
Laredo
San Antonio
Del Rio
Eagle Pass
Presidio
Marfa
Alpine
Pecos
Big Spring
Sweetwater
Abilene
Temple
Bryan
Navasota
Hearne
Palestine
Tyler
Longview
Marshall
Texarkana
Hope
Little Rock
Pine Bluff
Memphis
Jonesboro
Blytheville
Paragould
Cairo
Poplar Bluff
Cape Girardeau
St. Louis
Alton
Springfield
Joplin
Kansas City
St. Joseph
Atchison
Leavenworth
Lincoln
Hastings
Kearney
North Platte
Grand Island
Omaha
Council Bluffs
Sioux City
Fremont
Norfolk
Wayne
Sioux Falls
Mitchell
Chamberlain
Pierre
Huron
Aberdeen
Watertown
Sisseton
Wahpeton
Fargo
Grand Forks
Devils Lake
Minot
Williston
Glendive
Miles City
Billings
Bozeman
Butte
Helena
Missoula
Kalispell
Great Falls
Havre
Shelby
Cut Bank
Conrad
Chester
Scobey
Wolf Point
Glasgow
Malta
Harlem
Fort Benton
Lewistown
Winnett
Roundup
Forsyth
Hysham
Custer
Hardin
Crow Agency
Lodge Grass
Sheridan
Buffalo
Gillette
Moorcroft
Newcastle
40
35
50
55
Old 40
New 50
Old 50
New 55
Old and New 40
Old 40
New 50
Old 40
New 50
Old 40
New 50

MAP OF THE UNITED STATES.

& Washington Lumber Manufacturers' Association et al. vs Union Pacific Railroad Company et al.



COMPARATIVE LUMBER RATE SHOWING DISTANCES.

	Miles	Rate	Mills
From Portland to Omaha, Nebraska	1799	Old 50	5.56
		New 55	6.11
" " Kansas City, Mo.	2030	Old 50	4.92
		New 55	5.42
" " Chicago, Illinois	2202	Old 50	4.36
		New 60	5.24
From Portland to St. Louis, Mo.	2403	Old 52½	4.37
		New 60	4.99
From Vancouver, B. C., to Winnipeg, Man.			
Via Canadian Pacific	1482	Old and New 40	5.40
Via Great Northern	1730	Old and New 40	4.62

U. P.-I. C. C. No. 554, minimums on fir lumber were changed to read as follows:

Cars 30 ft. or under in length, 30,000 lbs.;
Over 30 ft. to and including 34 ft., 30,000 lbs.;
Over 34 ft. to and including 36 ft., 40,000 lbs.;
Over 36 ft., 40,000 lbs.;

Flat cars when loaded to full capacity actual weight, weight will govern, but not less than 20,000 pounds on cars 30 feet or under; 24,000 pounds on cars exceeding 30 ft. in length.

Effective July 5-25-1903, Tariff O. R. & N. 5-112, I. C. C. 771. The minimums were again changed as follows:

Cars 36 ft. and less, 30,000 lbs.;
Cars over 30 ft., 40,000 lbs.;

On July 10th, 1904, under Supplement No. 8, it was as follows:

Box car shipments:
Cars 36 ft. or less, 30,000 lbs.;
Cars over 36 ft., 34,000 lbs.
Flat car shipments:
Under 36 ft., 30,000 lbs.;
36 ft. or over, 40,000 lbs.;

This basis, substantially, remained in effect until a year and a half ago, when it was changed to a cubical capacity basis with minimums ranging from 30,000 to 60,000 pounds per car, while on flat car shipments the minimum was made 60,000 pounds on cars of marked capacity of 60,000 pounds and in the case of a marked capacity which was less the minimum would be 5 per cent. less than the marked capacity. Cubical capacity basis is in vogue at present time.

STATEMENT.

O. R. & N. Tariff No. 304-I. C. C. Freight Tariff File No. 653½, effective Dec. 6, 1888, shows rate on fir lumber from Portland, East Portland, Bridal Veil, Hood River and Intermediate points to Cheyenne, Denver and Colorado common points, 50 cents per hundred.

Supplement One to this same Tariff, effective February 8, 1889, put in a 40 cent rate from Portland, East Portland and Albina, to Denver, Colorado common points and points intermediate thereto.

This tariff was cancelled by O. R. & N. G. F. D. No. 142 I. C. C. Freight Tariff File No. 645, effective May 20, 1889, which named a rate of 50 cents between Portland, East Portland

and Albina and Cheyenne, Denver and Colorado common points.

However, Supplement One was immediately issued, effective same date as Tariff, naming a rate of 40 cents.

Tariff O. R. & N., G. F. D. No. 211, I. C. C. Freight Tariff File No. 736, cancelling O. R. & N., G. F. D. No. 142, effective October 7, 1889, and continued the application of the 40 cent rate.

Union Pacific System Tariff U. P. No. P-185, I. C. C. File No. 5003-1/2, effective July 15th, 1890, carried a rate of 50 cents to Denver and common points, and also a rate of 55 cents to Omaha, Council Bluffs and Kansas City.

This tariff was cancelled by Union Pacific System Tariff U. P. No. P-311, I. C. C. Freight Tariff File 5403, effective February 10, 1891, which continued the application of the 50 and 55 cent rate.

Union Pacific System Tariff U. P. No. P-398, I. C. C. File No. 5951, effective May 26, 1891, superseded I. C. C. File No. 5403, and carried the 50 and 55 cent rates, the same as in the preceding tariff.

This same application of 50 and 55 cent rate continued along through the following tariffs:

U. P., G. F. O. 40, I. C. C. Freight Tariff File No. 6037 superseding U. P., G. F. O. P-398, I. C. C. File No. 5951, effective June 6, 1891.

U. P., G. F. O. 330, I. C. C. Freight Tariff File No. 6802, supersedes U. P., G. F. O. 40, I. C. C. Freight Tariff File No. 6037, effective September 27, 1891.

U. P., G. F. O. 403, I. C. C. Freight Tariff File No. 6880 supersedes G. P. F. O. No. 330, I. C. C. Freight Tariff File No. 6802, effective September 17, 1891.

U. P., G. F. O. 549, I. C. C. Freight Tariff File No. 7006, supersedes U. P., G. F. O. 403, I C. C. Freight Tariff File No 6880, effective December 14, 1891.

U. P., G. F. O. 1355, I. C. C. Freight Tariff File No. 8014, supersedes U. P., G. F. O. 549, I. C. C. Freight Tariff File No. 7006, effective December 10, 1892.

This last mentioned tariff installs a rate of 40 cents which applied on lumber in box cars from Portland, East Portland and Bridal Veil, to stations in Colorado, Pueblo and north.

U. P., G. F. O. 1658, I. C. C. Freight Tariff File No. 8331 supersedes U. P., G. F. O. 1355, I. C. C. Freight Tariff File No. 8014, effective April 27, 1893.

This tariff continues the application of the 40 cent rate to

Pueblo, Colorado, and points north thereof, and is a maximum to intermediate points on a direct line between Ogden and Granger, and installs a 45 cent rate to Council Bluffs and Omaha, and all stations on main line of the Union Pacific Railway in Nebraska, and 50 cents to Kansas City, Leavenworth and all stations on Union Pacific Railway in Kansas.

U. P., G. F. O. No. 1658, I. C. C. Freight Tariff File No. 853, supersedes U. P., G. F. O. 1355, I. C. C. Freight Tariff File No. 8014, effective April 27, 1893.

U. P., G. F. O. 3078, I. C. C. Freight Tariff File No. 853, supersedes U. P., G. F. O. 1658, I. C. C. Freight Tariff File No. 9892, effective December 17, 1894, and continues the application of the 40 cent and 45 cent rate extending the forwarding territory through to Spokane, Connell, and various other points on the O. R. & N. Company's line in Washington. It also puts in a 48 cent rate from these points to branch line points in Nebraska and continues the 50 cent rate to stations in Kansas.

O. R. & N. Tariff 14, U. P. I. C. C. 47, supersedes I. C. C. Freight Tariff File No. 853, effective March 24, 1896, and continues the application of the 40 and 45 and 50 cent rates.

O. R. & N. Tariff 82 U. P. I. C. C. No. 198, supersedes O. R. & N. Tariff No. 14, U. P. I. C. C. 47, effective March 8, 1887, and continues with the application of the 40 and 45 and 50 cent rates.

O. R. & N. Tariff No. 158, U. P. I. C. C. 554, supersedes O. R. & N. 82, U. P. I. C. C. 198, effective April 15, 1901, and continues the application of the 40 cent rate, but raises the rate of Omaha and Nebraska main line points to 50 cents, the same as to Kansas stations.

O. R. & N. Tariff No. "J" 112, I. C. C. No. 771, superseded O. R. & N. 158 U. P. I. C. C. No. 554, and continued application of 50 cent rate to Missouri river, Nebraska and Kansas points, and was superseded on same basis by Trans-continental issue S. R. 662, I. C. C. 564.

O. R. & N. Tariff I. C. C. No. 698 superseded O. R. & N. I. C. C. 554 as to Colorado points, and, with its superseding issues continues application of 40 cent rate to Denver and Colorado common points until cancellation of T. C. B., I. C. C. 564 by I. C. C. 850, effective November 1st, 1907.

Under Supplement Two, effective August 24, 1901, O. R. & N. Tariff No. 158-I. C. C. No. 554, Southern Pacific Company's lines in Oregon and Corvallis and Eastern, with exception of Mohawk branch of Southern Pacific from Mohawk Junction to Wendling, Oregon, inclusive, were made parties to tariff to

all points on basis of Portland rate, and continues Portland basis to the present day. Prior to 1901 it may have been carried in separate issue, as was the Missouri river common points, Mississippi river common points and Chicago and common points.

Astoria and Columbia river common points have enjoyed 40 cent rate to St. Paul and Northern Pacific Railway eastern terminal since as far back as 1899 under Northern Pacific I. C. C. A-1097.

I will say that since April, 1893, a 45 cent rate on lumber was in existence from Portland to Omaha, on main line points on the Union Pacific in Nebraska. That rate remained in until 1901, when it was raised to 50 cents. It applied to Portland and points up as far as Pendleton, and during part of the period it applied to Spokane. Portland was the western limit; and the 40 cent rate from Portland to St. Paul, since 1893, and from Portland to Denver; practically 1899, and even at that time, in 1896, there was a 27½ cent rate into Salt Lake City.

At that time the rate from points west of Portland and in Washington and Oregon to Omaha would be the added locals; the local to Portland plus 45 cents from Portland. The rate previous to the recent advance has been a blanket rate from all producing points, or 50 cents to Omaha. So that the total rate from producing points on the Portland to Omaha shipments must have been higher before than after the 50 cent rate was put into effect.

There is a great deal of lumber produced east of Portland up along the O. R. & N. line in the coast basis territory, and also in the Montana-Oregon territory. I regard a blanket rate as the fairer rate from all producing points, all coast points, as against a Portland rate, with the added local from producing point.

(Anderson Exhibit No. 2 received in evidence; record page 60.)

ANDERSON EXHIBIT 2.

EXHIBIT A.

OLD RATES AND NEW OR ADVANCED RATES FROM PORTLAND, ORE., AND OTHER NORTHWEST PACIFIC COAST POINTS IN OREGON, TAKING SAME RATE WHEN HANDLED BY NORTHERN PACIFIC R. R. AND CONNECTIONS.

COMMODITY GROUPINGS.	RATES IN CENTS PER 100 POUNDS.													
	Salt Lake City, Utah, and Common points.		Denver, Colo., and Common points.		St. Paul, Minn., and Common points.		Omaha, Neb., and common points.		Kansas City, Mo., and Common points.		St. Louis, Mo., and Common points.		Chicago, Ill., and Common points.	
	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New
Group A, Shingles	50	60	60	60	50	60	60	65	60	65	62½	70	60	70
Group B, Cedar Lumber	50	55	50	60	50	60	60	65	60	65	62½	70	60	70
Group C, Pine, Fir, Hemlock, Larch and Spruce Lumber	45	45	40	50	40	50	50	55	50	55	52½	60	50	60
Group D, Long Timbers, etc., requiring two or more cars for transportation	50	55	50	60	50	60	60	65	60	65	62½	70	60	70

EXHIBIT B.

OLD RATES AND NEW OR ADVANCED RATES FROM PORTLAND, ORE., CASCADE LOCKS, ORE., AND OTHER NORTHWEST PACIFIC COAST POINTS ON LINE OF NORTHERN PACIFIC RAILWAY AND ON LINE OF O. R. & N. CO. TAKING SAME RATES.

COMMODITY GROUPINGS.	RATES IN CENTS PER 100 POUNDS.													
	Salt Lake City, Utah, and Common points.		Denver, Colo., and Common points.		St. Paul, Minn., and Common points.		Omaha, Neb., and Common points.		Kansas City, Mo., and Common points.		St. Louis, Mo., and Common points.		Chicago, Ill., and Common points.	
	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New
Group A, Shingles.....	40	50	50	60	.....	60	60	65	60	65	62½	70	60	70
Group B, Cedar Lumber.....	40	50	50	60	.....	60	60	65	60	65	62½	70	60	70
Group C, Pine, Fir, Hemlock, Larch and Spruce Lumber, etc.	40	40	40	50	.....	50	50	55	50	55	52½	60	50	60
Group D, Long Timbers, etc., requiring two or more cars for transportation.....	40	50	50	60	.....	60	60	65	60	65	62½	70	60	70

EXHIBIT C.

OLD RATES AND NEW OR ADVANCED RATES FROM WYETH, ORE., HOOD RIVER, ORE., AND OTHER POINTS IN OREGON ON LINES OF O. R. & N. CO., TAKING SAME RATES.

COMMODITY GROUPINGS.	RATES IN CENTS PER 100 POUNDS.													
	Salt Lake City, Utah and Common points.		Denver, Colo., and Common points.		St. Paul, Minn., and Common points.		Omaha, Neb., and common points.		Kansas City, Mo., and Common points.		St. Louis, Mo., and Common points.		Chicago, Ill., and Common points.	
	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New
Group A, Shingles	40	50	50	57½	.....	57½	60	62½	60	62½	62½	67½	60	67½
Group B, Cedar Lumber	40	47½	40	52½	.....	52½	50	57½	50	57½	57½	62½	55	62½
Group C, Pine, Fir, Hemlock, Larch and Spruce Lumber, etc.	40	40	40	47½	.....	47½	45	52½	50	52½	52½	57½	50	57½
Group D, Long Timbers, etc., requiring two or more cars for transportation	40	50	45	57½	.....	57½	55	62½	55	62½	57½	67½	55	67½

EXHIBIT D.

OLD RATES AND NEW OR ADVANCED RATES FROM PENDLETON, ORE., AND OTHER POINTS TAKING SAME RATE BASIS.

COMMODITY GROUPINGS.	RATES IN CENTS PER 100 POUNDS.													
	Salt Lake City, Utah, and Common points.		Denver, Colo., and Common points.		St. Paul, Minn., and Common points.		Omaha, Neb., and Common points.		Kansas City, Mo., and Common points.		St. Louis, Mo., and Common points.		Chicago, Ill., and Common points.	
	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New
Group A, Shingles	40	50	50	55	50	55	60	60	60	60	62½	65	60	65
Group B, Cedar Lumber	40	45	40	50	50	50	50	55	50	55	57½	60	55	60
Group C, Pine, Fir, Hemlock, Larch and Spruce Lumber, etc.	40	40	40	45	40	45	45	50	50	50	52½	55	50	55
Group D, Long Timbers, etc., requiring two or more cars for transportation	40	50	45	55	50	55	55	60	55	60	57½	65	55	65

EXHIBIT E.

OLD RATES AND NEW OR ADVANCED RATES, FROM ELGIN, ORE., LA GRANDE, ORE., BAKER CITY, ORE., AND OTHER POINTS TAKING SAME RATE BASIS.

COMMODITY GROUPINGS.	RATES IN CENTS PER 100 POUNDS.													
	Salt Lake City, Utah and Common points.		Denver, Colo., and Common points.		St. Paul, Minn., and Common points.		Omaha, Neb., and common points.		Kansas City, Mo., and Common points.		St. Louis, Mo., and Common points.		Chicago, Ill., and Common points.	
	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New
Group A, Shingles	30	40	50	50	50	53	60	53	60	53	62½	62½	60	63
Group B, Cedar Lumber	30	35	35	45	45	48	45	48	45	48	54½	57½	55	58
Group C, Pine, Fir, Hemlock, Larch and Spruce Lumber, etc.	30	30	35	40	40	43	40	43	40	43	49½	52½	50	53
Group D, Long Timbers, etc., requiring two or more cars for transportation	30	40	40	50	45	53	55	53	55	53	57½	62½	55	63

EXHIBIT F.

OLD RATES AND NEW OR ADVANCED RATES FROM POINTS IN OREGON ON ASTORIA & COLUMBIA RIVER R. R., AND SOUTHERN PACIFIC CO.'S LINES (INCLUDING JEFFERSON ST. STATION, PORTLAND) WHICH TAKE THE SAME RATE BASIS, WHEN ROUTED VIA PORTLAND, OREGON.

COMMODITY GROUPINGS.	RATES IN CENTS PER 100 POUNDS.													
	Salt Lake City, Utah, and Common points.		Denver, Colo., and Common points.		St. Paul, Minn., and Common points.		Omaha, Neb., and Common points.		Kansas City, Mo., and Common points.		St. Louis, Mo., and Common points.		Chicago, Ill., and Common points.	
	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New	Old	New
Group A, Shingles	45	50	55	60	.....	.....	60	65	60	65	62½	70	60	70
Group B, Cedar Lumber	40	50	50	60	.....	.....	60	65	60	65	62½	70	60	70
Group C, Pine, Fir, Hemlock, Larch and Spruce Lumber, etc.	40	40	40	50	.....	.....	50	55	50	55	52½	60	50	60
Group D, Long Timbers, etc., requiring two or more cars for transportation	40	50	50	60	.....	.....	60	65	60	65	62½	70	60	70

This paper shows the rate on the various groupings in the old and the new lumber tariff, from Portland and other north Pacific coast points to Salt Lake, Denver, St. Paul, Omaha, Kansas City, St. Louis, Chicago and points common with those. Also from Hood River points to Montana-Oregon rate basing points; the Willamette Valley and the Astoria and Columbia River basing points to the various territories that I mention. It is simply a comparison between the rates before and the present rate.

(Anderson Exhibit 3, received in evidence, record page 60.)

ANDERSON EX. 3.

From Pacific Coast points within the States of Oregon and Washington, taking coast rate basis, viz.: points on Astoria & Columbia River Railroad, Northern Pacific Railway, Southern Pacific Company lines both east and west side division north of, and including Ashland, and points on the O. R. & N. Company rail lines west of, and including Cascade Locks, Oregon, and water lines reaching points on either the Washington or Oregon side of the Columbia river and also Willamette river points.

To Chicago and Mississippi river common points on shingles, an advance of 10c per 100 pounds, former rate 60c, 61c, 62c, 63c. Advance rate 70c, 71c, 72c, 73c.

To Chicago and Mississippi river common points on lumber and other forest products an advance of 10c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Cedar lumber	60	70
Fir, hemlock, larch, spruce, etc.	50	60
Long timbers requiring two or more cars	60	70

To St. Louis and common points on lumber, shingles and other forest products, an advance of 7½c per 100 pounds, as follows:

	FORMER RATE	ADVANCED RATE
Shingles	62½	70
Cedar lumber	62½	70
Fir, hemlock, larch, spruce, etc.	52½	60
Long timbers requiring two or more cars	62½	70

To Western Missouri and Southeastern Kansas and common points, on lumber, shingles, and other forest products, an advance of 5c per 100 pounds, as follows:

	FORMER RATE	ADVANCED RATE
Shingles	62½	67½
Cedar lumber	62½	67½
Fir, hemlock, larch, spruce, etc.	52½	57½
Long timbers requiring two or more cars	62½	67½

To Missouri river common points on lumber, shingles and other forest products, an advance of 5c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	60	65
Cedar lumber	60	65
Fir, hemlock, larch, spruce, etc.	50	55
Long timbers requiring two or more cars	60	65

To Denver, Colorado, Cheyenne, Wyoming, Alliance, Nebraska, and common points on shingles, an advance of 5c from Astoria & Columbia River Railroad, O. R. & N. Company water lines, and Southern Pacific Company points as described in Paragraph 1, former rate 55c, advanced rate 60c, and on lumber and other forest products an advance of 10c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Cedar lumber	50	60
Pine lumber	40	50
Fir, hemlock, larch, spruce, etc.	40	50
Long timbers requiring two or more cars	50	60

To the above named points from other Pacific Coast points as designated in Paragraph 1 on lumber, shingles and other forest products an advance of 10c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	50	60
Cedar lumber	50	60
Pine lumber	40	50
Fir, hemlock, larch, spruce, etc.	40	50
Long timbers requiring two or more cars	50	60

To Salt Lake City, Utah, and common points from O. R. & N. Company water lines, Astoria & Columbia River Railroad and Southern Pacific Company points in Oregon on lumber, shingles, and other forest products, an advance of 5, 10 and 15c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	45	55
Cedar lumber	40	55
Pine lumber	40	45
Fir, hemlock, larch, spruce, etc.	40	45
Long timbers requiring two or more cars	40	55

To Salt Lake City, Utah, and common points from Northern Pacific Railway and O. R. & N. Company, Pacific Coast points as described in Paragraph 1, an advance of 10c per 100 pounds on lumber, shingles and other forest products as follows:

	FORMER RATE	ADVANCED RATE
Shingles	40	50
Cedar lumber	40	50
Long timbers requiring two or more cars	40	50

To St. Paul, Duluth, Minnesota, Fargo, North Dakota and common points from points on the Astoria and Columbia River Railroad, Northern Pacific Railway, O. R. & N. Company's lines as described in Paragraph 1, on lumber, shingles and other forest products, an advance of 10c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	50	60
Fir lumber	40	50
Long timbers requiring two or more cars	50	60

From northwest Pacific Coast points on O. R. & N. Company's lines in Oregon, from Wyeth to The Dalles, inclusive.

To Chicago and Mississippi river common points on lumber, shingles and other forest products, an advance of 7½c and 12½c as follows:

	FORMER RATE	ADVANCED RATE
Shingles	60	67½
Cedar lumber	55	62½
Pine lumber	50	57½
Fir, hemlock, larch, spruce, etc.	50	57½
Long timbers requiring two or more cars	55	67½

To St. Louis and common points on lumber, shingles and other forest products, an advance of 5 and 10c per 100 pounds follows:

	FORMER RATE	ADVANCED RATE
Shingles	62½	67½
Cedar lumber	57½	62½
Pine lumber	52½	57½
Fir, hemlock, larch, spruce, etc.	52½	57½
Long timbers requiring two or more cars	57½	67½

To Western Missouri and Southeastern Kansas common points on lumber, shingles and other products an advance of 2½ and 7½c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	62½	65
Cedar lumber	52½	60
Pine, fir, hemlock, larch, spruce, etc.	52½	55
Long timbers requiring two or more cars	57½	65

To Omaha, Nebraska, and other points taking a rate common therewith on lumber and shingles, and other forest products, an advance of 2½c and 7½ per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	60	62½
Cedar lumber	50	57½
Pine lumber, hemlock, larch, spruce, etc.	45	52½
Long timbers requiring two or more cars	55	62½

To Kansas City, Missouri, and other points taking a rate common thereon on lumber, shingles and other forest products, an advance of 2½c and 7½c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	60	62½
Cedar lumber	50	57½
Pine, fir, hemlock, larch, spruce, etc.	50	52½
Long timbers requiring two or more cars	55	62½

To Denver, Colorado, and Cheyenne, Wyoming, and points common therewith on lumber, shingles and other forest products, an advance of 7½ and 12½c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	50	57½
Cedar lumber	40	52½
Pine, fir, hemlock, larch, spruce, etc.	40	47½
Long timbers requiring two or more cars	45	57½

To Salt Lake City, Utah, and common points on lumber, shingles and forest products, an advance of 2½ and 12½c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	40	52½
Cedar lumber	40	47½
Pine, fir, hemlock, larch, spruce, etc.	40	42½
Long timbers requiring two or more cars	40	52½

From northwest Pacific Coast points on O. R. & N. Company's lines in Oregon, taking Spokane rate basis.

To Chicago and Mississippi river common points on lumber, shingles and other forest products, an advance of 5c and 10c substantially as follows:

	FORMER RATE	ADVANCED RATE
Shingles	60	65
Cedar lumber	55	60
Pine lumber	50	55
Fir, hemlock, larch, spruce, etc.	50	55
Long timbers requiring two or more cars	55	65

To St. Louis, and common points on lumber, shingles and other forest products, an advance of 2½ and 7½c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	62½	65
Cedar lumber	57½	60
Pine lumber	52½	55
Fir, hemlock, larch, spruce, etc.	52½	55
Long timbers requiring two or more cars	57½	65

To Western Missouri and Southeastern Kansas common points on lumber, shingles and other forest products an advance of 2½ and 7c per 100 pounds, substantially as follows:

	FORMER RATE	ADVANCED RATE
Shingles	62½	64½
Cedar lumber	52½	59½
Pine, fir, hemlock, larch, spruce, etc.	52½	54½
Long timbers requiring two or more cars	57½	64½

To Omaha, Nebraska, and other points taking a rate common therewith on lumber and other forest products, an advance of 5c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Cedar lumber	50	55
Pine, hemlock, larch, spruce, etc.	45	50
Long timbers requiring two or more cars	55	60

To Kansas City, Missouri, and other points taking a rate common therewith on lumber, and other forest products, an advance of 5c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Cedar lumber	50	55
Long timbers requiring two or more cars	55	60

To Denver, Colorado, and Cheyenne, Wyoming, and points common therewith on lumber, shingles and other forest products, an advance of 5c and 10c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	50	55
Cedar lumber	40	50
Pine, fir, hemlock, larch, spruce, etc.	40	45
Long timbers requiring two or more cars	45	55

To Salt Lake City, Utah, and common points on lumber, shingles and forest products, an advance of 2½ and 12½c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	40	50
Cedar lumber	40	45
Long timbers requiring two or more cars	40	50

From northwest Pacific Coast points on line of O. R. & N. Company in Oregon taking what is known as the Montana-Oregon rate basis to Chicago and Mississippi river common points on lumber, shingles and other forest products an advance of 3c and 8c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	60	63
Cedar lumber	55	58
Pine lumber	50	53
Fir, hemlock, larch, spruce, etc.	50	53
Long timbers requiring two or more cars	55	63

To St. Louis and common points on lumber and other forest products an advance of 3c and 5c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Cedar lumber	54½	57½
Pine, fir, hemlock, spruce, etc.	49½	52½
Long timbers requiring two or more cars	57½	62½

To Missouri river and common points on lumber and other forest products an advance of 3c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Cedar lumber	45	48
Pine, fir, hemlock, larch, spruce, etc.	40	43

To Denver, Colorado; Cheyenne, Wyoming, and common points on lumber and other forest products an advance of 5 and 10c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Cedar lumber	35	45
Pine, fir, hemlock, larch, spruce, etc.	35	40
Long timbers requiring two or more cars	40	50

To Salt Lake City, Utah, and common points on lumber, shingles and other forest products, an advance of 5 and 10c per 100 pounds as follows:

	FORMER RATE	ADVANCED RATE
Shingles	30	40
Cedar lumber	30	35
Long timbers requiring two or more cars	30	40

In addition to showing what is in the other table this Exhibit shows the advance in cents per hundred pounds to the various territories in more detailed form, taking a principal point, such as Denver, Chicago, St. Louis, St. Paul and Omaha, as illustrative.

(Anderson Exhibit 4 received in evidence, record page 61.)

ANDERSON EXHIBIT 4.

COMPARATIVE STATEMENT.

O. R. & N. Coast Basis.

Showing rates on fir lumber in cents per 100 lbs. and in mills per ton per mile from Portland, Troutdale, Bridal-Veil, and Cascade Locks, Oregon, four principal shipping points on main line of O. R. & N. Co. within the territory taking what is known as "Coast Rates" (Cascade Locks is extreme eastern limit of said territory and Portland extreme western limit as far as O. R. & N. Co. stations are concerned) to fifteen principal points on O. S. L. R. R. and twenty principal points on U. P. R. R., to and including Omaha, Neb. Also Orin Junction on Colorado & Southern; Denver, Colorado, via Granger and Ogden Gateways, and Omaha via various Colorado Gateways. Basis of comparison is East Bound Lumber Tariff S. R. 662, I. C. C. No. 564, effective 4/15/05 and S. R. 963, I. C. C. No. 850, effective 11/1/07. Mileages are taken from July, 1907, number of Official Railway Guide, published by National Railway Publishing Co., 24 Park Place, New York.

Statement is arranged so as to show a principal point in each territory taking a higher rate than the territory just preceding it.

COAST RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile.	
	427	Portland.....	31	.01452	30	.01405	De. .00047
	409	Troutdale.....		.01516		.01467	De. .00049
Weiser,	399	Bridal Veil....		.01554		.01504	De. .00050
Idaho.....	382	Cascade Locks		.01623		.01571	De. .00052
	404	Average.....		.01535		.01485	De. .00050
	440	Portland.....	34	.01545	32	.01455	De. .00090
	422	Troutdale.....		.01611		.01517	De. .00094
Payette,	412	Bridal Veil....		.01650		.01553	De. .00097
Idaho.....	395	Cascade Locks		.01722		.01620	De. .00102
	417	Average.....		.01631		.01535	De. .00096
	451	Portland.....	35	.01552	33	.01463	De. .00089
	433	Troutdale.....		.01617		.01524	De. .00093
Arcadia,	423	Bridal Veil....		.01655		.01560	De. .00095
Ore.....	406	Cascade Locks		.01724		.01626	De. .00098
	428	Average.....		.01636		.01542	De. .00094
	462	Portland.....	35	.01515	34	.01472	De. .00043
	444	Troutdale.....		.01577		.01532	De. .00045
	434	Bridal Veil....		.01613		.01567	De. .00046
Parma, Idaho	417	Cascade Locks.		.01679		.01631	De. .00048
	439	Average.....		.01595		.01549	De. .00046
	623	Portland.....	35	.01124	35	.01124	
	605	Troutdale.....		.01157		.01157	
Shoshone,	595	Bridal Veil....		.01176		.01176	No
Idaho.....	578	Cascade Locks.		.01211		.01211	Change.
	600	Average.....		.01167		.01167	

COAST RATE BASIS.

Stations To	Dist. In Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
Minidoka, Idaho.....	672	Portland.....	35	.01043	35	.01042	No Change.
	654	Troutdale.....		.01070		.01070	
	644	Bridal Veil....		.01087		.01087	
	627	Cascade Locks.		.01116		.01116	
	649	Average.....		.01079		.01079	
Pocatello, Idaho.....	731	Portland.....	35	.00958	35	.00958	No Change.
	713	Troutdale.....		.00982		.00982	
	703	Bridal Veil....		.00996		.00996	
	686	Cascade Locks.		.01020		.01020	
	708	Average.....		.00989		.00989	
McCammon, Idaho.....	754	Portland.....	40	.01061	40	.01061	No Change
	736	Troutdale.....		.01087		.01087	
	726	Bridal Veil....		.01102		.01102	
	709	Cascade Locks.		.01128		.01128	
	731	Average.....		.01094		.01094	
Salt Lake City, Utah	902	Portland.....	40	.00887	40	.00887	No Change
	884	Troutdale.....		.00905		.00905	
	874	Bridal Veil....		.00915		.00915	
	857	Cascade Locks.		.00933		.00933	
	879	Average.....		.00910		.00910	
Bancroft, Idaho.....	783	Portland.....	40	.01022	40	.01022	No Change
	765	Troutdale.....		.01046		.01046	
	755	Bridal Veil....		.01060		.01060	
	738	Cascade Locks.		.01084		.01084	
	760	Average.....		.01053		.01053	

COAST RATE BASIS.

Stations To	Dist. In Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile.	In cts. per 100 lbs.	In mills per ton per mile.	
	799	Portland.....	40	.01001	41	.01026	In. .00025
	781	Troutdale.....		.01024		.01050	In. .00026
Soda Spgs.,	771	Bridal Veil....		.01038		.01064	In. .00026
Idaho.....	754	Cascade Locks.		.01061		.01088	In. .00027
	776	Average.....		.01031		.01057	In. .00026
	862	Portland.....	40	.00928	42	.00974	In. .00046
	844	Troutdale.....		.00948		.00995	In. .00047
Cokeville,	834	Bridal Veil....		.00959		.01007	In. .00048
Wyo.....	817	Cascade Locks.		.00979		.01028	In. .00049
	839	Average.....		.00954		.01001	In. .00047
	905	Portland.....	40	.00884	43	.00950	In. .00066
	887	Troutdale.....		.00902		.00970	In. .00068
Kemmerer,	877	Bridal Veil....		.00912		.00981	In. .00069
Wyo.....	860	Cascade Locks.		.00930		.01000	In. .00070
	882	Average.....		.00907		.00975	In. .00068
	920	Portland.....	40	.00870	44	.00957	In. .00087
	902	Troutdale		.00887		.00976	In. .00089
Opal, Wyo...	892	Bridal Veil....		.00897		.00987	In. .00090
	875	Cascade Locks.		.00914		.01006	In. .00092
	897	Average.....		.00892		.00981	In. .00089
	945	Portland.....	40	.00847	45	.00952	In. .00105
	927	Troutdale.....		.00863		.00971	In. .00108
Granger,	917	Bridal Veil....		.00872		.00981	In. .00109
Wyo.....	900	Cascade Locks.		.00889		.01000	In. .00111
	922	Average.....		.00868		.00976	In. .00108

COAST RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile.	
	975	Portland.....	40	.00821	45	.00923	In. .00102
	957	Troutdale.....		.00836		.00940	In. .00104
Green River,	947	Bridal Veil....		.00845		.00950	In. .00108
Wyo.....	930	Cascade Locks.		.00860		.00968	In. .00108
	952	Average.....		.00840		.00945	In. .00105
	990	Portland.....	40	.00808	46	.00929	In. .00121
	972	Troutdale.....		.00823		.00946	In. .00123
Rock Spgs.,	962	Bridal Veil....		.00832		.00956	In. .00124
Wyo.....	945	Cascade Locks.		.00847		.00974	In. .00127
	967	Average.....		.00827		.00951	In. .00124
	1109	Portland.....	40	.00721	47	.00848	In. .00127
	1091	Troutdale.....		.00733		.00862	In. .00129
Rawlins,	1081	Bridal Veil....		.00740		.00869	In. .00129
Wyo.....	1064	Cascade Locks		.00752		.00883	In. .00131
	1086	Average.....		.00737		.00866	In. .00129
	1226	Portland.....	40	.00653	49	.00799	In. .00146
	1208	Troutdale.....		.00662		.00811	In. .00149
Laramie,	1198	Bridal Veil....		.00667		.00818	In. .00151
Wyo.....	1181	Cascade Locks.		.00818		.00830	In. .00153
	1203	Average.....		.00665		.00815	In. .00150
	1235	Portland.....	40	.00648	50	.00810	In. .00162
	1217	Troutdale.....		.00657		.00822	In. .00165
Red Buttes,	1207	Bridal Veil....		.00663		.00829	In. .00166
Wyo.....	1190	Cascade Locks.		.00672		.00840	In. .00168
	1212	Average.....		.00660		.00825	In. .00165

COAST RATE BASIS.

Stations To	Dist. In Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
Cheyenne, Wyo.....	1283	Portland.....	40	.00624	50	.00779	In. .00155
	1265	Troutdale.....		.00632		.00781	In. .00159
	1255	Bridal Veil....		.00637		.00797	In. .00160
	1238	Cascade Locks.		.00646		.00808	In. .00162
	1260	Average.....		.00635		.00794	In. .00159
Orin Jct. (Proper) Wyo.....	1437	Portland.....	48	.00668	59	.00807	In. .00139
	1419	Troutdale.....		.00677		.00817	In. .00140
	1409	Bridal Veil....		.00681		.00823	In. .00142
	1392	Cascade Locks.		.00690		.00833	In. .00143
	1414	Average.....		.00679		.00820	In. .00141
Orin Jct., Wyo. When destined beyond.....	1437	Portland.....	40	.00557	50	.00696	In. .00139
	1419	Troutdale.....		.00564		.00705	In. .00141
	1409	Bridal Veil....		.00568		.00710	In. .00142
	1392	Cascade Locks.		.00575		.00718	In. .00143
	1414	Average.....		.00566		.00707	In. .00141
Denver, Colo., Via Granger, & U. P...	1390	Portland.....	40	.00576	50	.00719	In. .00143
	1372	Troutdale.....		.00583		.00728	In. .00145
	1362	Bridal Veil....		.00587		.00734	In. .00147
	1345	Cascade Locks.		.00595		.00743	In. .00148
	1367	Average.....		.00585		.00732	In. .00147
Via Salt Lake D.& R.G.,Gr. Jct.,Col.Mid., Col.Spgs.,C.& & S.....	1572	Portland.....	40	.00509	50	.00636	In. .00127
	1554	Troutdale.....		.00515		.00644	In. .00129
	1544	Bridal Veil....		.00518		.00648	In. .00130
	1527	Cascade Locks.		.00524		.00655	In. .00131
	1549	Average.....		.00516		.00646	In. .00130

COAST RATE BASIS.

Stations To	Dist. In Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile.	In cts. per 100 lbs.	In mills per ton per mile.	
Via Salt Lake D.& R.G.	1644	Portland	40	.00487	50	.00608	In. .00121
	1626	Troutdale		.00492		.00615	In. .00123
	1616	Bridal Veil		.00495		.00618	In. .00123
	1599	Cascade Locks.		.00500		.00625	In. .00125
	1621	Average		.00494		.00617	In. .00123
Sidney, Neb.	1385	Portland	40	.00578	50	.00722	In. .00144
	1367	Troutdale		.00585		.00732	In. .00147
	1357	Bridal Veil		.00590		.00737	In. .00147
	1340	Cascade Locks.		.00597		.00746	In. .00149
	1362	Average		.00587		.00734	In. .00147
Colton, Neb.	1391	Portland	42	.00604	51	.00733	In. .00129
	1373	Troutdale		.00612		.00743	In. .00131
	1363	Bridal Veil		.00616		.00748	In. .00132
	1346	Cascade Locks.		.00624		.00758	In. .00134
	1368	Average		.00614		.00745	In. .00131
Lodge Pole, Neb	1403	Portland	45	.00641	53	.00756	In. .00115
	1385	Troutdale		.00650		.00765	In. .00115
	1375	Bridal Veil		.00655		.00771	In. .00116
	1358	Cascade Locks.		.00663		.00781	In. .00118
	1380	Average		.00652		.00768	In. .00116
Perdue, Neb	1407	Portland	46	.00654	54	.00768	In. .00114
	1389	Troutdale		.00662		.00778	In. .00116
	1379	Bridal Veil		.00667		.00783	In. .00116
	1362	Cascade Locks.		.00675		.00793	In. .00118
	1384	Average		.00665		.00780	In. .00115

COAST RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile.	
	1412	Portland.....	47	.00666	55	.00779	In. .00113
	1394	Troutdale.....		.00672		.00789	In. .00117
Chappell,	1384	Bridal Veil....		.00679		.00795	In. .00116
Neb.....	1367	Cascade Locks.		.00688		.00805	In. .00117
	1389	Average.....		.00677		.00792	In. .00115
	1427	Portland.....	48	.00673	55	.00771	In. .00098
	1409	Troutdale.....		.00681		.00781	In. .00100
Julesburg,	1399	Bridal Veil....		.00686		.00786	In. .00100
Colo.....	1382	Cascade Locks.		.00695		.00796	In. .00101
	1404	Average.....		.00684		.00783	In. .00099
	1438	Portland.....	48	.00668	55	.00765	In. .00097
	1420	Troutdale.....		.00676		.00775	In. .00099
Big Spgs.,	1410	Bridal Veil....		.00681		.00780	In. .00099
Neb.....	1393	Cascade Locks.		.00689		.00789	In. .00100
	1415	Average.....		.00678		.00777	In. .00099
	1443	Portland.....	49	.00679	55	.00762	In. .00083
	1425	Troutdale.....		.00687		.00772	In. .00085
Megeath,	1415	Bridal Veil....		.00693		.00777	In. .00084
Neb.....	1398	Cascade Locks.		.00701		.00787	In. .00086
	1420	Average.....		.00690		.00775	In. .00085
	1449	Portland.....	50	.00691	55	.00759	In. .00068
	1431	Troutdale.....		.00699		.00769	In. .00070
	1421	Bridal Veil....		.00704		.00774	In. .00070
Brule, Neb...	1404	Cascade Locks.		.00712		.00783	In. .00071
	1426	Average.....		.00701		.00771	In. .00070

COAST RATE BASIS.

Stations To	Dist. In Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
North Platte, Neb.	1508	Portland	50	.00663	55	.00729	In. .00066
	1490	Troutdale		.00671		.00738	In. .00067
	1480	Bridal Veil		.00676		.00743	In. .00067
	1463	Cascade Locks.		.00684		.00752	In. .00068
	1485	Average		.00674		.00741	In. .00067
Kearney, Neb.	1603	Portland	50	.00624	55	.00686	In. .00062
	1585	Troutdale		.00631		.00694	In. .00063
	1575	Bridal Veil		.00636		.00698	In. .00062
	1558	Cascade Locks.		.00645		.00706	In. .00061
	1580	Average		.00633		.00696	In. .00063
Grand Island, Neb.	1645	Portland	50	.00608	55	.00669	In. .00061
	1627	Troutdale		.00615		.00676	In. .00061
	1617	Bridal Veil		.00618		.00680	In. .00062
	1600	Cascade Locks.		.00625		.00688	In. .00063
	1622	Average		.00616		.00678	In. .00062
Columbus, Neb.	1708	Portland	50	.00585	55	.00644	In. .00059
	1690	Troutdale		.00592		.00651	In. .00059
	1680	Bridal Veil		.00595		.00655	In. .00060
	1663	Cascade Locks.		.00601		.00661	In. .00060
	1685	Average		.00593		.00653	In. .00060
Omaha, Neb. Via Granger & U. P.	1799	Portland	50	.00556	55	.00611	In. .00055
	1781	Troutdale		.00561		.00618	In. .00057
	1771	Bridal Veil		.00565		.00621	In. .00056
	1754	Cascade Locks.		.00570		.00627	In. .00057
	1776	Average		.00563		.00619	In. .00056

COAST RATE BASIS.

Stations To	Dist. In Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile.	In cts. per 100 lbs.	In mills per ton per mile.	
Via Salt Lake,	2213	Portland.....	50	.00452	55	.00497	In. .00045
D.& R.G.,	2195	Troutdale.....		.00456		.00501	In. .00045
Denver and	2185	Bridal Veil....		.00458		.00504	In. .00046
U. P.....	2168	Cascade Locks.		.00461		.00570	In. .00046
	2190	Average.....		.00457		.00502	In. .00045
Via Salt Lake,	2141	Portland.....	50	.00467	55	.00514	In. .00047
D.& R.G.,	2123	Troutdale.....		.00471		.00518	In. .00047
Gr. Jct.,	2113	Bridal Veil....		.00473		.00521	In. .00048
Col. Mid.,	2096	Cascade Locks.		.00477		.00525	In. .00048
Col. Spgs..	2118	Average.....		.00472		.00519	In. .00047
Via Granger,	1795	Portland.....	50	.00557	55	.00613	In. .00056
U. P., Fre-	1777	Troutdale.....		.00563		.00619	In. .00056
mont and	1767	Bridal Veil....		.00566		.00623	In. .00057
C.& N.W...	1750	Cascade Locks.		.00571		.00629	In. .00058
	1772	Average.....		.00564		.00621	In. .00057
Via Salt Lake,	2138	Portland.....	50	.00468	55	.00514	In. .00046
D.& R.G.,	2120	Troutdale.....		.00472		.00519	In. .00047
Colo.Spgs.,	2110	Bridal Veil....		.00474		.00521	In. .00047
C.R.I.& P.	2093	Cascade Locks.		.00478		.00526	In. .00048
	2115	Average.....		.00473		.00520	In. .00048
Via Salt Lake,	2067	Portland.....	50	.00484	55	.00532	In. .00048
D.& R.G.,	2049	Troutdale.....		.00488		.00537	In. .00049
Gr. Jct.,	2039	Bridal Veil....		.00490		.00539	In. .00049
Col. Mid.,	2022	Cascade Locks.		.00495		.00544	In. .00049
Col. Spgs., C.R.I.& P.	2044	Average.....		.00489		.00538	In. .00049

This is a comparative statement of the rates on fir lumber, Portland, Troutdale, Bridal Veil, Cascade Locks to various points on the Oregon Short Line and Union Pacific as far east as Omaha, showing the rates in cents per hundred, and in mills per ton per mile, the old and the new compared. All of these statements were prepared from old tariff, I. C. C. 564, and the new one, I. C. C. 850. In the case of comparisons with any other roads, I got some of the rates from tariffs received from the Soo Line, and from the Port Arthur, Kansas City Southern, Texas Pacific, and also the Southern Railway. They were existing tariffs now in effect. From the Canadian Pacific as well. I prepared those all myself.

(Anderson Exhibit 5, received in evidence, record page 62.)

ANDERSON EXHIBIT No. 5.

Comparative Statement O. R. & N. Coast Basis.

Showing rates on Fir Lumber in cents per 100 lbs. and in mills per ton per mile from Portland, Oregon, to Chicago, Illinois, via all the various routings.

Basis of comparison is East Bound Lumber Tariff S. R. 662, I. C. C. No. 564, effective April 15, 1905, and S. R. 963, I. C. C. 850, effective Nov. 1, 1907.

Mileages are taken from July, 1907, Number of Official Railway Guide, published by National Ry. Publishing Company, 24 Park Place, New York.

Distance in Miles FROM Portland	Jcts.	TO CHICAGO	Rates on Fir Lumber Old	New	Diff.
		A. T. & S. F. Ry.			
458			50c.	60c.	10c.
		No. 586.			
	458	Via Kansas City.			
2488		15 Via Granger, U. P.	.00402	.00482	.00080
2484		26 Via Granger, U. P., Pullman, C. R. I. & P.	.00402	.00483	.00081
2742		27 Via Salt Lake, D. & R. G., Denver, U. P.	.00365	.00438	.00073
2651		27 Via Salt Lake, D. & R. G., Colo. Spgs., C. R. I. & P.	.00377	.00452	.00075
2670		27 Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Denver, U. P.	.00375	.00449	.00074
2580		27 Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Colo. Spgs., C. R. I. & P.	.00388	.00465	.00077
		Chicago & Alton R. R.			
		No. 731.			
	489	Via Kansas City.			
2615		10 Via N. P., Billings, C. B. & Q.	.....	.00458	.....
2519		15 Via Granger, U. P.	.....	.00476	.....
2515		26 Via Granger, U. P., Pullman, C. R. I. & P.	.....	.00477	.....
2773		27 Via Salt Lake, D. & R. G., Denver, U. P.	.....	.00433	.....

Distance in Miles FROM Portland	Distance in Miles FROM Jcts.	TO CHICAGO	Rates on Fir Lumber Old	New	Diff.
		CHICAGO & ALTON R. R.—Cont'd.	50c.	60c.	10c.
2701		27 Via Salt Lake, D. & R. G., Grand Jct., Colo. Mid., Denver, U. P..	.....	.00444	.....
2682		27 Via Salt Lake, D. & R. G., Colo. Spgs., C. R. I. & P.....	.....	.00447	.....
2611		27 Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Colo. Springs, C. R. I. & P.....	.....	.00459	.....
		CHICAGO & NORTH WESTERN RY.			
		Via Minnesota Transfer.			
	421	8 Via Northern Pacific.....	.00406	.00487	.00081
2463	2042	12 A. Via O. R. & N., Spokane.....	.....	.00531	.....
	421	S. & I. Ry., Kingsgate, B. C.....			
	141	C. P. Ry., Portal, N. D.....			
2259	726	M. St. P. & S. St. M. Ry.....			
	550				
	493	Via Council Bluffs, Iowa.			
		No. 921			
2292		15 Via Granger, U. P.....	.00436	.00524	.00088
2463	580	26 Via Granger, U. P., Pullman, C. R. I. & P.....	.00406	.00487	.00081
2706		27 Via Salt Lake, D. & R. G., Denver, U. P.....	.00370	.00443	.00073
2634		27 Via Salt Lake, D. & R. G., Grand Jct., Colo. Mid., Denver, U. P..	.00380	.00456	.00076
2621		27 Via Salt Lake, D. & R. G., Colo. Spgs., C. R. I. & P.....	.00382	.00458	.00076
2560		27 Via Salt Lake, D. & R. G., Grand Jct., Colo. Mid., Colo. Spgs., C. R. I. & P.....	.00391	.00469	.00078
		CHICAGO, BURLINGTON & QUINCY R. R.			
		No. 2418.			
	442	Via Minnesota Transfer.			
2484	2042	8 Via Northern Pacific.....	.00402	.00483	.00081

Distance in Miles FROM Portland	Distance in Miles FROM Jcts.	TO CHICAGO	Rates on Fir Lumber Old	New	Diff.
		CHICAGO, BURLINGTON & QUINCY R. R.—Cont'd.	50c.	60c.	10c.
2280	1838	12 A. Via O. R. & N., Spokane..... S. & I. Ry., Kingsgate, B. C..... C. P. Ry., Portal, N. D..... M. St. P. & St. M. Ry.....	.....	.00526	.....
	486	Via Council Bluffs, Iowa.			
2295		15 Via Granger, U. P.....	.00436	.00523	.00087
2466		26 Via Granger, U. P., Pullman, C. R. I. & P.....	.00406	.00487	.00081
		CHICAGO GREAT WESTERN RY.			
		No. 3266.			
	430	Via Minnesota Transfer.			
2472	2042	8 Via Northern Pacific.....	.00405	.00485	.00080
2268	1838	12 A. Via O. R. & N., Spokane..... S. & I. Ry., Kingsgate, B. C..... C. P. Ry., Portal, N. D..... M. St. P. & St. M. Ry.....	.....	.00529	.....
	597	Via Kansas City, Mo.			
2763	902	16 Via Salt Lake, D. & R. G.....	.00361	.00434	.00073
	624				
	640	Pueblo, M. Pac. Ry.....			
2778	902	16 Via Salt Lake, D. & R. G.....			
	639	Grand Jct., Colo. Mid.....			
	640	Pueblo, M. Pac. Ry.....	.00360	.00432	.00072
	503	Via Council Bluffs, Iowa.			
2302	1799	15 Via Granger, U. P.....	.00434	.00521	.00087
2472	1969	26 Via Granger, U. P., Pullman, C. R. I. & P.....	.00405	.00485	.00080
2716	2213	27 Via Salt Lake, D. & R. G., Denver, U. P.....	.00368	.00442	.00074
2644	2141	27 Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Denver, U. P..	.00378	.00454	.00076
2641	2138	27 Via Salt Lake, D. & R. G., Colo. Spgs., C. R. I. & P.....	.00379	.00454	.00075

Distance in Miles FROM Portland	Distance in Miles FROM Jcts.	TO CHICAGO	Rates on Fir Lumber Old	New	Diff.
		CHICAGO, GREAT WESTERN RY.—Cont'd.	50c.	60c.	10c.
2570	2067	27 Via Salt Lake, D. & R. G., Grand Jct., Colo. Mid., Colo. Spgs., C. R. I. & P.	.00389	.00467	.00078
		CHICAGO JUNCTION RY.			
		35404.			
	1799	Via Granger, U. P., and Council Bluffs.			
2292	493	15 Via C. & N. W.	.....	.00524	.....
2291	492	15 Via C. M. & St. P.	.....	.00524	.....
2295	496	15 Via C. B. & Q.	.....	.00523	.....
2302	503	15 Via C. R. I. & P.	.....	.00521	.....
2302	503	15 Via C. G. W.	.....	.00521	.....
2315	516	15 Via Ill. Cent.	.....	.00518	.....
	2042	Via Nor'n Pac. and Minnesota Transfer.			
2462	420	8 Via C. M. & St. P., Franklin Park Ill.	.....	.00487	.....
2484	442	8 Via C. B. & Q., West Crossg., Ill.	.....	.00483	.....
2566	524	8 Via C. R. I. & P., Burr Oak, Ill.	.....	.00468	.....
2472	430	8 Via C. G. W., Belton, Ill.	.....	.00485	.....
2517	475	8 Via Wis. Cent., Franklin Park, Ill.	.....	.00477	.....
2463	421	8 Via C. St. P. M. & O., Elroy, C. & N. W., Melrose Park, Ill.	.....	.00487	.....
2533	491	8 Via M. & St. L., Albert Lea, Ill. Cent., Broadview, Ill.	.....	.00474	.....
	1838	12 A. Via O. R. & N., Spokane..... S. & I. Ry., Kingsgate, B. C..... C. P. Ry., Portal, N. D..... M. St. P. & S. St. M. Ry..... Minnesota Transfer.....			
2258	420	Via C. M. & St. P., Franklin Park, Ill.	.....	.00531	.....
2280	442	Via C. B. & Q., West Crossing, Ill.	.....	.00526	.....
2362	524	Via C. R. I. & P., Burr Oak, Ill.	.....	.00508	.....
2268	430	Via C. G. W., Belton, Ill.	.....	.00529	.....
2313	475	Via Wis. Cent., Franklin Park, Ill.	.....	.00519	.....

Distance in Miles FROM Portland	Distance in Miles FROM Jcts.	TO CHICAGO	Rates on Fir Lumber Old	New	Diff.
		CHICAGO JUNCTION RY.—Cont'd.	50c.	60c.	10c.
2259	421	Via C. St. P. M. & O., Elroy, C. & N. W., Melrose Park, Ill....	.....	.00531	.....
2329	491	Via M. & St. L., Albert Lea, Ill. Cent., Broadview, Ill.....	.....	.00515	.....
		No. 3541. CHICAGO, MILWAUKEE AND ST. PAUL RY.			
	420	Via Minnesota Transfer, Minn.			
2462	2042	8 Via Northern Pacific.....	.00406	.00487	.00081
2258	1838	12 A. Via O. R. & N., Spokane..... S. & I. Ry., Kingsgate, B. C..... C. P. Ry., Portal, N. D..... M. St. P. & S. St. M. Ry.....	.....	.00531	.....
	492	Via Council Bluffs, Iowa.			
2291	1799	15 Via Granger, U. P.....	.00436	.00524	.00088
2461	1969	26 Via Granger, U. P., Pullman, C. R. I. & P.....	.00406	.00488	.00082
2705	2213	27 Via Salt Lake, D. & R. G., Denver, U. P.....	.00370	.00444	.00074
2633	2141	27 Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Denver, U. P..	.00380	.00456	.00076
2630	2138	27 Via Salt Lake, D. & R. G., Colo. Spgs., C. R. I. & P.....	.00380	.00456	.00076
2559	2067	27 Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Colo. Spgs., C. R. I. & P.....	.00391	.00469	.00078
		CHICAGO, ROCK ISLAND AND PACIFIC RY.			
		No. 4918.			
	523	Via Minnesota Transfer, Minn.			
2565	2042	8 Via Northern Pacific.....	.00390	.00468	.00078
2361	1838	12 A. Via O. R. & N., Spokane.... S. & I. Ry., Kingsgate, B. C..... C. P. Ry., Portal, N. D..... M. St. P. & S. St. M. Ry.....	.....	.00508	.....

Distance in Miles FROM Portland	Jcts.	TO CHICAGO	Rates on Fir Lumber Old	New	Diff.
		CHICAGO, ROCK ISLAND AND PACIFIC RY. (Cont'd).	50c.	60c.	10c.
	503	Via Council Bluffs, Iowa.			
2302	1799	15 Via Granger, U. P.	.00434	.00521	.00087
2472	1969	26 Via Granger, U. P., Pullman, C. R. I. & P.	.00405	.00485	.00080
2716	2213	27 Via Salt Lake, D. & R. G., Denver, U. P.	.00368	.00442	.00074
2644	2141	27 Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Denver, U. P.	.00378	.00454	.00078
2641	2138	27 Via Salt Lake, D. & R. G., Colo. Spgs., C. R. I. & P. Ry.	.00375	.00454	.00079
2570	2067	27 Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Colo. Spgs., C. R. I. & P.	.00389	.00467	.00078
		ILLINOIS CENTRAL.			
		No. 7264.			
	491	Via Minnesota Tfr., M. & St. L., Albert Lea.			
2533	2042	8 Via N. P.	.00395	.00474	.00079
2329	1838	12 A. Via O. R. & N., Spokane, S. & I. Ry., Kingsgate, B. C., C. P. Ry., Portal, N. D., M. St. P. & S. St. M. Ry.	.....	.00515	.....
	516	Via Council Bluffs, Iowa.			
2315	1799	15 Via Granger, U. P.	.00432	.00518	.00086
2485	1969	26 Via Granger, U. P., Pullman, Colo., C. R. I. & P.	.00402	.00483	.00081
		No. 85636.			
		LAKE MICH. CAR FERRY TRANS. CO. Via Minn. Trans., M. & St. P. & S. St. M., Faithorn Jct., Mich., Wis. & Mich. Ry., Pestigo Harbor, Wis.			
	2042	8 Via Northern Pacific	.....	.....	.....
	1838	12 A. Via O. R. & N., Spokane, S. & I. Ry., Kingsgate, B. C., C. P. Ry., Portal, N. D., M. & St. L. and S. St. M. Ry.	.....	.....	.....

Distance in Miles FROM Portland	Distance in Miles FROM Jcts.	TO CHICAGO	Rates on Fir Lumber Old	New	Diff.
		No. 13625.			
		WISCONSIN CENTRAL RY.			
	475	Via Minnesota Transfer.			
2517	2042	8 Via Ngrthern Pacific.....	.00397	.00477	.00080
2313	1838	12 A. Via O. R. & N., Spokane.....	.....	.00519	.....
		C. P. Ry., Portal, N. D.....			
		M. & St. L. & S. St. M. Ry.....			
		Via Ladysmith, Wis.			
2341	1838	12 A. Via O. R. & N., Spokane.....	.....	.00513	.....
		S. & I. Ry., Kingsgate, B. C.....			
		C. P. Ry., Portal, N. D.....			
		M. & St. P. and S. St. M. Ry....			

This is a comparative statement of the old and new lumber rates from coast basing points to Chicago by all the routing shown in these two tariffs. It shows the cents per hundred and mills per ton per mile. It shows it so that no matter what road you would ship over, one could tell from that the rate per ton per mile you pay, and it also shows the mileages. Portland is the basis for the western end. This is the coast basis, Portland. The coast basis is that that applies to Portland and points west of the Cascade Range, taking from Ashland clear north up to the British Columbia Line; but in these statements I refer to the basis primarily from Portland, because I am figuring the mileage and I have to take a particular point.

That pink strip to the left there (referring to map) running down in the Willamette Valley to all points, Denver and the East, and up into Washington, is the coast rate basis.

(Anderson Exhibit 6 received in evidence, record page 64.)

ANDERSON EXHIBIT No. 6.

Comparative Statement O. R. & N. Coast Basis.

Showing rates of Fir lumber in cents per 100 lbs. and in mills per Ton per mile from Portland, Oregon, to St. Louis, Mo., via all the various routings.

Basis of comparison is East-bound Lumber Tariff S. R. 662, I. C. C. No. 564, effective April 15, 1905, and S. R. 963, I. C. C. 850, effective Nov. 1, 1907.

Mileages are taken from July, 1907, number of official Railway Guide, published by National Ry. Publishing Company, 24 Park Place, New York.

Distance in Miles FROM Portland.	Jcts.	TO ST. LOUIS, MO.	Rates on Fir Lumber Old.	New.	Diff.
		No. 742. Chicago & Alton Ry.	52½	60	7½
	230	Via Kans. City, Mo.			
		No. 10.			
2406		Via N. P., Billings, C. B. & Q.....	.00436	.00499	.00063
		No. 15.			
2310		Via Granger and U. P.....	.00455	.00519	.00064
		No. 26.			
2306		Via Granger, U. P., Pullman, Colo., C. R. I. & P.....	.00412	.00520	.00108
		No. 27.			
2564		Via Salt Lake, D. & R. G., Denver, U. P.....	.....	.00468	.....
		No. 27.			
2492		Via Salt Lake, D. & R. G., Grand Jct., Colo. Mid., Denver, U. P..	.....	.00482	.....
		No. 27.			
2473		Via Salt Lake, D. & R. G., Colo. Spgs., C. R. I. & P.....	.....	.00484	.....
		No. 27.			
2402		Via Salt Lake, D. & R. G., Grand Jct., Colo. Mid., Colo. Spgs., C. R. I. & P.....	.....	.00499	.....

Distance in Miles FROM Portland.	Jcts.	TO ST. LOUIS, MO.	Rates on Fir Lumber Old.	New.	Diff.
		No. 3001. CHICAGO, BURLINGTON & QUINCY RY. Via Minnesota Transfer, C. B. & Q. or C. R. I. & P. via Burlington, Iowa, and C. B. & Q.			
2628	586	8 Via N. P., C. R. I. & P.	.00400	.....	.....
2646	604	8 Via N. P., C. B. & Q.	.00397	.....	.....
	346	Via Kans. City.			
2472		10 Via N. P., Billings, C. B. & Q.	.00425	.00485	.00060
2376		15 Via Granger, U. P.	.00442	.00505	.00063
2372		26 Via Granger, U. P., Pullman, Colo., C. R. I. & P.	.00443	.00505	.00062
		No. 5651. C. R. I. & P. (St. L. K. C. & COLO. R. R.). Via Kansas City.			
2425		10 Via N. P., Billings, C. B. & Q.	.00433	.00495	.00062
2329		15 Via Granger, U. P.	.00451	.00515	.00064
2325		26 Via Granger, U. P., Pullman, Colo., C. R. I. & P.	.00452	.00516	.00064
		No. 8856. M. K. & T. RY.			
	373	Via Kansas City.			
2499		10 Via N. P., Billings, C. B. & Q.	.00420	.00480	.00060
2403		15 Via Granger, U. P.	.00437	.00499	.00062
		No. 9526. MO. PAC. RY.			
	283	Via Kansas City.			
2409		10 Via N. P., Billings, C. B. & Q.	.00436	.00498	.00062
2313		15 Via Granger, U. P.	.00454	.00519	.00065
		No. 11741. ST. L. & S. F. R. R.	52½	60	7½
2559	433	Via Kans. City.			
		No. 10. Via N. P., Billings, C. B. & Q.	.00410	.00469	.00059
2463		No. 15. Via Granger, U. P.	.00426	.00487	.00061

Distance in Miles. FROM Portland.	Distance in Miles. FROM Jcts.	TO ST. LOUIS, MO.	Rates on Fir Lumber Old.	New.	Diff.
		No. 13617. WABASH R. R. Via Kansas City.			
2403	277	No. 10. Via N. P., Billings, C. B. & Q....	.00437	.00499	.00062
2307		No. 15. Via Granger, U. P.....	.00455	.00520	.00065
2561		No. 27. Via Salt Lake, D. & R. G., Denver, U. P.....	.....	.00469	.....
2489		No. 27. Via Salt Lake, D. & R. G., Grand Jct., Colo. Mid., Denver, U. P	.....	.00482	.....
2470		No. 27. Via Salt Lake, D. & R. G., Colo. Springs, C. R. I. & P.....	.....	.00486	.....
2399		No. 27. Via Salt Lake, D. & R. G., Grand Jct., Colo. Mid., Colo. Spgs., C. R. I. & P.....	.....	.00500	.....

This is a comparison of the old and new fir lumber rates from Portland to St. Louis via all routings. It shows the mileages, the rates in cents per hundred pounds and per ton per mile.

(Anderson Exhibit 7 received in evidence, record page 65.)

ANDERSON EXHIBIT No. 7.

COMPARATIVE STATEMENT.

2½ CENTS HIGHER THAN SPOKANE BASIS.

Showing rates on Fir Lumber in cents per 100 lbs. and in mills per ton per mile from Wyeth and Hood River, Oregon, two principal shipping points on O. R. & N. Co's line within territory extending from Wyeth to The Dalles, inclusive, distance of 36 miles, and taking under Tariff S. R. 963, I. C. C. No. 850, rate basis 2½ cents higher than Spokane Basis, which latter prevailed under former tariff.

To fifteen principal points on O. S. L. R. R. and twenty principal points on U. P. R. R., to and including Omaha, Neb. Also Orin Junction on Colorado & Southern; Denver, Colo, via Granger and Ogden Gateways, and Omaha via various Colorado Gateways. Basis of comparison is East Bound Lumber Tariff S. R. 662, I. C. C. No. 564, effective 4/15/05, and S. R. 963, I. C. C. No. 850, effective 11/1/07. Mileages are taken from July, 1907, Number of Official Railway Guide, published by National Railway Publishing Company, 24 Park Place, New York.

Statement is arranged so as to show a principal point in each territory taking a higher rate than the territory just preceding it.

BASIS 2½c. ABOVE SPOKANE RATE.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			Cts. per 100 lbs.	Mills per ton per mile	Cts. per 100 lbs.	Mills per ton per mile	
Weiser	375	Wyeth	31	.01653	30	.01600	De. .00053
	361	Hood River		.01717		.01662	De. .00055
	368	Average		.01685		.01630	De. .00055
Payette	388	Wyeth	34	.01753	32	.01650	De. .00103
	374	Hood River		.01818		.01711	De. .00107
	381	Average		.01785		.01680	De. .00105
Arcadia	399	Wyeth	35	.01754	33	.01654	De. .00100
	385	Hood River		.01818		.01714	De. .00104
	392	Average		.01786		.01684	De. .00102
Parma	410	Wyeth	35	.01707	34	.01659	De. .00048
	396	Hood River		.01768		.01717	De. .00051
	403	Average		.01737		.01687	De. .00050
Shoshone	571	Wyeth	35	.01226	35	.01226	
	557	Hood River		.01257		.01257	
	564	Average		.01241		.01241	
Minedoka	620	Wyeth	35	.01129	35	.01129	
	606	Hood River		.01155		.01155	
	613	Average		.01142		.01142	
Pocatello	679	Wyeth	35	.01031	35	.01031	
	665	Hood River		.01053		.01053	
	672	Average		.01042		.01042	

BASIS 2½c. ABOVE SPOKANE RATE.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			Cts. per 100 lbs.	Mills per ton per mile	Cts. per 100 lbs.	Mills per ton per mile	
McCammon..	702	Wyeth.....	40	.01140	40	.01140	
	688	Hood River...		.01163		.01163	
	695	Average.....		.01151		.01151	
Salt Lake....	850	Wyeth.....	40	.00941	40	.00941	
	836	Hood River...		.00957		.00957	
	843	Average.....		.00949		.00949	
Bancroft, Idaho.....	731	Wyeth.....	40	.01094	40	.01094	
	717	Hood River...		.01116		.01116	
	724	Average.....		.01105		.01105	
Soda Springs, Idaho.....	747	Wyeth.....	40	.01071	41	.01098	.00027
	753	Hood River...		.01091		.01119	.00028
	740	Average.....		.01081		.00108	.00027
Cokeville, Wyo.....	810	Wyeth.....	40	.00988	42	.01037	.00049
	796	Hood River...		.01005		.01055	.00050
	803	Average.....		.00996		.01046	.00050
Kemmerer, Wyo.....	853	Wyeth.....	40	.00937	42½	.00996	.00059
	839	Hood River...		.00954		.01013	.00059
	846	Average.....		.00946		.01005	.00059
Opal, Wyo...	868	Wyeth.....	40	.00922	42½	.00980	.00058
	854	Hood River...		.00937		.00995	.00058
	861	Average.....		.00929		.00987	.00058

BASIS 2½c. ABOVE SPOKANE RATE.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			Cts. per 100 lbs.	Mills per ton per mile	Cts. per 100 lbs.	Mills per ton per mile	
Granger, Wyo.	893	Wyeth	40	.00896	42½	.00952	.00056
	879	Hood River		.00910		.00967	.00057
	886	Average		.00903		.00959	.00056
Green River, Wyo.	923	Wyeth	40	.00867	42½	.00921	.00054
	909	Hood River		.00880		.00934	.00054
	916	Average		.00873		.00928	.00055
Rock Springs, Wyo.	938	Wyeth	40	.00853	43½	.00928	.00075
	924	Hood River		.00866		.00942	.00076
	931	Average		.00859		.00934	.00075
Rawlins, Wyo.	1057	Wyeth	40	.00757	44½	.00842	.00085
	1043	Hood River		.00767		.00853	.00086
	1050	Average		.00762		.00848	.00086
Laramie, Wyo.	1174	Wyeth	40	.00681	46½	.00792	.00111
	1160	Hood River		.00690		.00802	.00112
	1167	Average		.00686		.00797	.00111
Cheyenne, Wyo.	1231	Wyeth	40	.00650	47½	.00772	.00122
	1217	Hood River		.00657		.00781	.00124
	1224	Average		.00654		.00776	.00122
Orin Jct., Wyo.	1385	Wyeth	48	.00693	55½	.00801	.00108
	1371	Hood River		.00700		.00810	.00110
Ind. 6009 proper.	1378	Average		.00697		.00806	.00109

BASIS 2½c. ABOVE SPOKANE RATE.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			Cts. per 100 lbs.	Mills per ton per mile	Cts. per 100 lbs.	Mills per ton per mile	
Ind. 6010 Orin Jct., Wyo., when destined beyond.....	1385	Wyeth.....	40	.00578	47½	.00686	00108
	1371	Hood River...		.00584		.00693	.00109
	1378	Average.....		.00581		.00689	.00108
Ind. 13052 Denver, Col., via Granger, U. P.....	1338	Wyeth.....	40	.00598	47½	.00710	.00112
	1324	Hood River...		.00604		.00718	.00114
	1331	Average.....		.00601		.00714	.00113
Ind. 6047 via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid., Colo. Spgs., C. & S. Ry.....	1520	Wyeth.....	40	.00526	47½	.00625	.00099
	1506	Hood River...		.00531		.00631	.00100
	1513	Average.....		.00529		.00628	.00099
Ind. 6438, via Salt Lake, D. & R. G...	1592	Wyeth.....	40	.00503	47½	.00597	.00094
	1578	Hood River...		.00507		.00602	.00095
	1585	Average.....		.00505		.00599	.00094
Sidney, Neb.	1333	Wyeth.....	40	.00600	47½	.00713	.00113
	1319	Hood River...		.00607		.00720	.00113
	1326	Average.....		.00603		.00716	.00113
Colton, Neb..	1339	Wyeth.....	42	.00627	48½	.00724	.00097
	1325	Hood River...		.00634		.00732	.00098
	1332	Average.....		.00631		.00729	.00098

BASIS 2½c. ABOVE SPOKANE RATE.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			Cts. per 100 lbs.	Mills per ton per mile	Cts. per 100 lbs.	Mills per ton per mile	
Lodge Pole, Neb.	1351	Wyeth	45	.00666	50½	.00748	.00082
	1337	Hood River		.00673		.00755	.00082
	1344	Average		.00670		.00751	.00081
Perdue, Neb.	1355	Wyeth	45	.00664	51½	.00760	.00096
	1341	Hood River		.00671		.00768	.00097
	1348	Average		.00668		00764	.00096
Chappell, Neb.	1360	Wyeth	45	.00662	52½	.00772	.00110
	1346	Hood River		.00669		.00780	.00111
	1353	Average		.00665		.00776	.00111
Julesburg, Colo.	1375	Wyeth	45	.00654	52½	.00764	.00110
	1361	Hood River		.00661		.00771	.00110
	1368	Average		.00658		.00767	.00109
Big Springs, Neb.	1386	Wyeth	45	.00649	52½	.00758	.00109
	1372	Hood River		.00656		.00765	.00109
	1379	Average		.00653		.00761	.00108
Megeath, Neb.	1391	Wyeth	45	.00647	52½	.00755	.00108
	1377	Hood River		.00654		.00763	.00109
	1384	Average		.00650		.00759	.00109
Brule, Neb.	1397	Wyeth	45	.00644	52½	.00752	.00108
	1383	Hood River		.00651		.00759	.00108
	1390	Average		.00647		.00755	.00108

BASIS 2½c. ABOVE SPOKANE RATE.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			Cts. per 100 lbs.	Mills per per ton mile	Cts. per 100 lbs.	Mills per per ton mile	
North Platte, Neb.	1456	Wyeth	45	.00618	52½	.00721	.00103
	1442	Hood River		.00624		.00728	.00104
	1449	Average		.00621		.00725	.00104
Kearney, Neb.	1551	Wyeth	45	.00580	52½	.00677	.00097
	1537	Hood River		.00586		.00683	.00097
	1544	Average		.00582		.00680	.00098
Grand Island, Neb.	1593	Wyeth	45	.00566	52½	.00659	.00093
	1579	Hood River		.00570		.00665	.00095
	1586	Average		.00567		.00662	.00095
Columbus, Neb.	1656	Wyeth	45	.00543	52½	.00634	.00091
	1642	Hood River		.00548		.00639	.00091
	1649	Average		.00546		.00637	.00091
Omaha, Neb. Via Granger, U. P.	1747	Wyeth	45	.00515	52½	.00601	.00086
	1733	Hood River		.00519		.00606	.00087
	1740	Average		.00517		.00603	.00086
Via Salt Lake D. & R. G., Denver, U. P.	2161	Wyeth	45	.00416	52½	.00486	.00070
	2147	Hood River		.00419		.00489	.00070
	2154	Average		.00418		.00488	.00070

BASIS 2½c. ABOVE SPOKANE RATE.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			Cts. per 100 lbs.	Mills per ton per mile	Cts. per 100 lbs.	Mills per ton per mile	
Via Salt Lake, D. & R. G.,							
Gr. Jct., Colo.	2089	Wyeth	45	.00431	52½	.00503	.00072
Spgs., Colo.	2075	Hood River		.00434		.00506	.00072
Mid., C. & S., Denver and U. P.	2082	Average		.00432		.00504	.00072
Via Granger, U. P.	1743	Wyeth	45	.00516	52½	.00602	.00086
	1729	Hood River		.00521		.00607	.00086
Fremont, C. & N. W.	1736	Average		.00518		.00605	.00087
Via Salt Lake, D. & R. G.	2086	Wyeth	45	.00431	52½	.00503	.00072
	2072	Hood River		.00434		.00507	.00073
Col. Spgs., C. R. I. & P.	2079	Average		.00433		.00505	.00072
Via Salt Lake, D. & R. G.	2015	Wyeth	45	.00447	52½	.00521	.00074
Gr. Jct., Col. Mid.	2001	Hood River		.00450		.00525	.00075
Col. Spgs., C. R. I & P.	2008	Average		.00448		.00523	.00075

This is a comparative statement of rates from what we term the Hood River district, which is now on a 2½ cent per hundred higher basis than from Spokane. It shows the old and the new rates in cents per hundred and in tons per mile, from Hood River and Wyeth to various points on the Short Line and Union Pacific as far as Omaha.

(Anderson Exhibit 8 received in evidence, record page 65.)

ANDERSON EXHIBIT No. 8.

COMPARATIVE STATEMENT.

MONTANA-OREGON RATE BASIS.

Showing rates on Fir Lumber in cents per 100 pounds and in mills per ton per mile from Elgin, La Grande, Union and Baker City, Oregon, four principal points on line of O. R. & N. Co. within territory known as Mont.-Ore., and including that portion of O. R. & N. Co's tracks Meacham, Oregon, to Huntington, Oregon, distance of 124 miles.

To fifteen principal points on O. S. L. R. R. and twenty principal points on U. P. R. R., to and including Omaha, Neb. Also Orin Junction on Colorado & Southern; Denver, Colorado, via Granger and Ogden Gateways, and Omaha via various Colorado Gateways. Basis of comparison is East Bound Lumber Tariff S. R. 662, I. C. C. No. 564, effective 4/15/05, and S. R. 963, I. C. C. No. 850, effective 11/1/07. Mileages are taken from July, 1907, Number of Official Railway Guide, published by National Railway Publishing Company, 24 Park Place, New York.

Statement is arranged so as to show a principal point in each territory taking a higher rate than the territory just preceding it.

MONTANA—OREGON RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
Weiser, Idaho	143	Elgin	16½	.02308	16½	.02308	No Diff.
	122	La Grande		.02705		.02705	
	109	Union		.03028		.03028	
	70	Baker City		.04714		.04714	
	111	Average		.02973		.02973	
Payette, Idaho	156	Elgin	17½	.02244	17½	.02244	No Diff.
	135	La Grande		.02593		.02593	
	122	Union		.02869		.02869	
	83	Baker City		.04217		.04217	
	124	Average		.02823		.02823	
Arcadia, Ore.	167	Elgin	17½	.02096	17½	.02096	No Diff.
	146	La Grande		.02397		.02397	
	133	Union		.02632		.02632	
	94	Baker City		.03830		.03723	
	135	Average		.02593		.02593	
Parma, Idaho	178	Elgin	17½	.01966	17½	.01966	No Diff.
	157	La Grande		.02229		.02229	
	144	Union		.02431		.02431	
	105	Baker City		.03333		.03333	
	146	Average		.02397		.02397	
Shoshone, Idaho	339	Elgin	27½	.01622	27½	.01622	No Diff.
	318	La Grande		.01730		.01730	
	305	Union		.01803		.01803	
	266	Baker City		.02068		.02068	
	307	Average		.01792		.01792	

MONTANA—OREGON RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
	388	Elgin	27½	.01418	27½	.01418	
	367	La Grande		.01499		.01499	
Mindoka,	354	Union		.01554		.01554	No
Idaho	315	Baker City		.01746		.01746	Diff.
	356	Average		.01545		.01545	
	447	Elgin	27½	.01230	27½	.01230	
	426	La Grande		.01291		.01291	
Pocatello,	413	Union		.01332		.01332	No
Idaho	374	Baker City		.01471		.01471	Diff.
	415	Average		.01325		.01325	
	470	Elgin	30	.01277	30	.01277	
	449	La Grande		.01336		.01336	
McCammon,	436	Union		.01376		.01376	No
Idaho	397	Baker City		.01511		.01511	Diff.
	438	Average		.01370		.01370	
	618	Elgin	30	.00971	30	.00971	
	597	La Grande		.01005		.01005	
Salt Lake,	584	Union		.01027		.01027	No
Utah	545	Baker City		.01101		.01101	Diff.
	596	Average		.01024		.01024	
	499	Elgin	30	.01202	30	.01202	
	478	La Grande		.01255		.01255	
Bancroft,	465	Union		.01290		.01290	No
Idaho	426	Baker City		.01409		.01409	Diff.
	467	Average		.01285		.01285	

MONTANA—OREGON RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
	515	Elgin	30	.01167	31	.01203	.00036
	494	La Grande		.01215		.01255	.00040
Soda Spgs.,	481	Union		.01247		.01289	.00042
Idaho	442	Baker City		.01357		.01403	.00046
	483	Average		.01242		.01283	.00041
	578	Elgin	30	.01038	32	.01107	.00069
	557	La Grande		.01077		.01149	.00072
Cokeville,	544	Union		.01103		.01176	.00073
Wyo	505	Baker City		.01188		.01267	.00079
	546	Average		.01099		.01172	.00073
	621	Elgin	30	.00966	33	.01063	.00097
	600	La Grande		.01000		.01100	.00100
Kemmerer,	587	Union		.01022		.01124	.00102
Wyo	548	Baker City		.01095		.01204	.00109
	589	Average		.01021		.01121	.00100
	636	Elgin	30	.00943	34	.01069	.00126
	615	La Grande		.00974		.01106	.00132
Opal, Wyo	602	Union		.00997		.01130	.00133
	563	Baker City		.01066		.01208	.00142
	604	Average		.00993		.01126	.00133
	661	Elgin	30	.00908	35	.01116	.00208
	640	La Grande		.00938		.01094	.00156
Granger,	627	Union		.00957		.01116	.00159
Wyo	588	Baker City		.01020		.01190	.00170
	629	Average		.00953		.01113	.00160

MONTANA—OREGON RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
	691	Elgin.....	35	.01013	35	.01013	
	670	La Grande....		.01004		.01004	
Green River,	657	Union.....		.01065		.01065	No
Wyo.....	618	Baker City....		.01133		.01133	Diff.
	659	Average.....		.01062		.01062	
	706	Elgin.....	35	.00991	36	.01102	.00111
	685	La Grande....		.01023		.01051	.00028
Rock Spgs.,	672	Union.....		.01042		.01071	.00029
Wyo.....	633	Baker City....		.01106		.01137	.00031
	674	Average.....		.01038		.01068	.00030
	825	Elgin.....	35	.00848	37	.00897	.00049
	804	La Grande....		.00871		.00920	.00049
Rawlins,	791	Union.....		.00885		.00936	.00051
Wyo.....	752	Baker City....		.00931		.00984	.00053
	793	Average.....		.00883		.00933	.00050
	942	Elgin.....	35	.00743	39	.00828	.00085
	921	La Grande....		.00760		.00847	.00087
Laramie,	908	Union.....		.00771		.00859	.00088
Wyo.....	869	Baker City....		.00805		.00898	.00093
	910	Average.....		.00769		.00857	.00088
	999	Elgin.....	35	.00701	40	.00801	.00100
	978	La Grande....		.00716		.00818	.00102
Cheyenne,	965	Union.....		.00725		.00829	.00104
Wyo.....	926	Baker City....		.00756		.00864	.00108
	967	Average.....		.00724		.00827	.00103

MONTANA—OREGON RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
	1153	Elgin.....	43	.00746	48	.00833	.00087
Orin Jct.,	1132	La Grande....		.00760		.00848	.00088
Wyo.,	1119	Union.....		.00769		.00858	.00089
Proper....	1080	Baker City....		.00796		.00889	.00093
	1121	Average.....		.00767		.00856	.00089
Orin Jct.,	1153	Elgin.....	35	.00607	40	.00694	.00087
Wyo.,	1132	La Grande....		.00618		.00707	.00089
When	1119	Union.....		.00626		.00715	.00089
Destined	1080	Baker City....		.00648		.00741	.00093
Beyond...	1121	Average.....		.00624		.00714	.00090
	1106	Elgin.....	35	.00633	40	.00723	.00090
Denver, Colo.	1185	La Grande....		.00644		.00737	.00093
Via	1072	Union.....		.00651		.00746	.00095
Granger,	1033	Baker City....		.00678		.00774	.00096
U. P.....	1074	Average.....		.00652		.00745	.00093
Via Salt Lake	1288	Elgin.....	35	.00543	40	.00621	.00078
City, D.&	1267	La Grande....		.00553		.00631	.00078
R.G., Gr.	1254	Union.....		.00558		.00638	.00080
Jct., Col.	1215	Baker City....		.00576		.00658	.00082
Mid. Col. Spgs.,C.& S	1256	Average.....		.00557		.00637	.00080
	1360	Elgin.....	35	.00515	40	.00588	.00073
Salt Lake	1339	La Grande....		.00523		.00597	.00074
City,	1326	Union.....		.00528		.00603	.00075
D.& R.G..	1287	Baker City....		.00544		.00622	.00078
	1328	Average.....		.00527		.00602	.00075

MONTANA—OREGON RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
	1101	Elgin	35	.00636	40	.00727	.00091
	1080	La Grande		.00648		.00741	.00093
	1067	Union		.00656		.00750	.00094
Sidney, Neb.	1028	Baker City		.00681		.00778	.00097
	1069	Average		.00655		.00748	.00093
	1107	Elgin	37	.00668	41	.00741	.00073
	1086	La Grande		.00681		.00755	.00074
	1073	Union		.00690		.00764	.00074
Colton, Neb.	1034	Baker City		.00716		.00793	.00077
	1075	Average		.00688		.00763	.00075
	1119	Elgin	40	.00715	43	.00769	.00054
	1098	La Grande		.00729		.00783	.00054
Lodge Pole,	1085	Union		.00752		.00793	.00041
Neb	1046	Baker City		.00765		.00822	.00057
	1087	Average		.00736		.00791	.00055
	1123	Elgin	40	.00712	43	.00766	.00054
	1102	La Grande		.00736		.00780	.00044
	1089	Union		.00735		.00790	.00055
Perdu, Neb.	1050	Baker City		.00762		.00819	.00057
	1091	Average		.00733		.00788	.00055
	1128	Elgin	40	.00709	43	.00762	.00053
	1107	La Grande		.00722		.00777	.00055
Chappell,	1094	Union		.00731		.00786	.00055
Neb	1055	Baker City		.00758		.00815	.00057
	1096	Average		.00730		.00785	.00055

MONTANA—OREGON RATE BASIS

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
	1143	Elgin	40	.00700	43	.00752	.00052
	1122	La Grande		.00713		.00766	.00053
Julesburg,	1109	Union		.00721		.00775	.00054
Colo	1070	Baker City		.00748		.00804	.00056
	1111	Average		.00720		.00774	.00054
	1154	Elgin	40	.00693	43	.00745	.00052
	1133	La Grande		.00706		.00759	.00053
Big Spgs.,	1120	Union		.00714		.00768	.00054
Neb	1081	Baker City		.00740		.00796	.00056
	1122	Average		.00713		.00766	.00053
	1159	Elgin	40	.00690	43	.00742	.00052
	1138	La Grande		.00703		.00756	.00053
	1125	Union		.00711		.00764	.00053
Megeath, Neb.	1086	Baker City		.00737		.00792	.00055
	1127	Average		.00710		.00763	.00053
	1165	Elgin	40	.00687	43	.00738	.00051
	1144	La Grande		.00699		.00752	.00053
Brule, Neb.	1131	Union		.00707		.00760	.00053
	1092	Baker City		.00733		.00788	.00055
	1133	Average		.00706		.00759	.00053
	1224	Elgin	40	.00654	43	.00703	.00049
	1203	La Grande		.00665		.00715	.00050
No. Platte,	1190	Union		.00672		.00723	.00051
Neb	1151	Baker City		.00695		.00747	.00052
	1192	Average		.00671		.00721	.00050

MONTANA—OREGON RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
Kearney, Neb	1319	Elgin	40	.00607	43	.00652	.00045
	1298	La Grande		.00616		.00662	.00046
	1285	Union		.00623		.00669	.00046
	1246	Baker City		.00642		.00690	.00048
	1287	Average		.00621		.00668	.00047
Grand Isld., Neb	1361	Elgin	40	.00588	43	.00632	.00044
	1340	La Grande		.00597		.00642	.00045
	1327	Union		.00602		.00647	.00045
	1288	Baker City		.00621		.00668	.00047
	1329	Average		.00602		.00647	.00045
Columbus, Neb	1424	Elgin	40	.00562	43	.00604	.00042
	1403	La Grande		.00570		.00613	.00043
	1390	Union		.00576		.00619	.00043
	1351	Baker City		.00592		.00637	.00045
	1392	Average		.00575		.00618	.00043
Omaha, Neb., via Granger, U. P	1515	Elgin	40	.00528	43	.00568	.00040
	1494	La Grande		.00535		.00575	.00040
	1481	Union		.00540		.00581	.00041
	1442	Baker City		.00555		.00596	.00041
	1483	Average		.00555		.00580	.00040
Via Salt Lake City, D. & R. G., D ver, U. P	1929	Elgin	40	.00415	43	.00446	.00031
	1908	La Grande		.00419		.00451	.00032
	1895	Union		.00422		.00453	.00031
	1856	Baker City		.00431		.00463	.00032
	1897	Average		.00422		.00453	.00031

MONTANA—OREGON RATE BASIS.

Stations To	Dist. in Miles	Stations From	Old		New		Diff.
			In cts. per 100 lbs.	In mills per ton per mile	In cts. per 100 lbs.	In mills per ton per mile	
Via Salt Lake City,	1857	Elgin.....	40	.00431	43	.00463	.00032
D. & R. G.	1836	La Grande....		.00436		.00468	.00032
Gr. Jct.	1823	Union.....		.00439		.00472	.00033
Colo. Mid.	1784	Baker City....		.00449		.00482	.00033
Colo. Spgs. C. & S. Denver U. P.....	1825	Average.....		.00439		.00471	.00032
Via Granger U. P. Fremont C. & N.W..	1511	Elgin.....	40	.00529	43	.00622	.00093
	1490	La Grande....		.00537		.00631	.00094
	1477	Union.....		.00542		.00636	.00094
	1438	Baker City....		.00556		.00654	.00098
	1479	Average.....		.00541		.00635	.00094
Via Salt Lake City D. & R. G. Gr. Jct. Colo. Mid. Colo. Spgs. C.R.I.& P.	1783	Elgin.....	40	.00449	43	.00482	.00033
	1762	La Grande....		.00454		.00488	.00034
	1749	Union.....		.00457		.00492	.00035
	1710	Baker City....		.00468		.00503	.00035
	1751	Average.....		.00457		.00491	.00034
Via Salt Lake City D. & R. G. Colo. Spgs. C.R.I.& P.	1854	Elgin.....	40	.00432	43	.00464	.00032
	1833	La Grande....		.00437		.00469	.00032
	1820	Union.....		.00440		.00472	.00032
	1781	Baker City....		.00449		.00483	.00034
	1822	Average.....		.00439		.00483	.00033

This is a comparative statement of fir lumber rates from what is known as the Montana-Oregon rate basis, taking Elgin, LaGrande, Union, and Baker City for illustration, showing the rate in cents per hundred and in tons per mile, to Short Line and Union Pacific points as far as Omaha.

(Anderson Exhibit 9 received in evidence, record page 66.)

ANDERSON EXHIBIT No. 9.

Portland, Ore.,
vs.
Spokane, Wash.

NEW BASIS.
5c. Differential.

COMPARATIVE STATEMENT.

Showing distance in miles and rates in cents per 100 lbs. and per ton per mile on fir and pine lumber from Portland, Ore., and Spokane, Wash., in effect Nov. 1st and subsequent thereto.

To fifteen principal points on the Oregon Short Line R. R., and twenty principal points on Union Pacific R. R.; also Orin Junction, Wyo., on the Colorado Southern Ry., Denver via Ogden and Granger Gateways, and Omaha via all Gateways.

Basis of comparison is Transcontinental Freight Bureau East Bound Lumber Tariff, S. R. 963, I. C. C. No. 850, effective Nov. 1, 1907.

Mileages are taken from July, 1907, number of Official Railway Guide, published by National Railway Publishing Co., No. 24 Park Place, New York City.

Statement is arranged so as to show a principal point in each territory taking a higher rate than the territory just preceding it.

STATIONS. TO	From Spokane.			From Portland.			Diff.
	Dist.	Rate 100 Lbs.	In Cents Ton Mile.	Dist.	Rate 100 Lbs.	In Cents Ton Mile.	
Weiser, Idaho	447	30	.01342	427	30	.01405	.....
Payette, Idaho	460	32	.01391	440	32	.01455	.....
Arcadia, Ore	471	33	.01401	451	33	.01463	.....
Parma, Idaho	482	34	.01411	462	34	.01472	.....
Shoshone, Idaho	643	35	.01089	623	35	.01124	.....
Minidoka, Idaho	692	35	.01012	672	35	.01042	.....
Pocatello, Idaho	751	35	.00932	731	35	.00958	.....
McCammon, Idaho	774	40	.01034	754	40	.01061	.....
Salt Lake, Utah	922	40	.00868	902	40	.00887	.....
Bancroft, Idaho	803	40	.00996	783	40	.01026	.....
Soda Spgs., Idaho	819	40	.00977	799	41	.01026	.01 .00049 02
Cokeville, Wyo	882	40	.00907	862	42	.00974	.00067 03
Kemmerer, Wyo	925	40	.00865	905	43	.00950	.00085 04
Opal, Wyo	940	40	.00851	920	44	.00957	.00106 05
Granger, Wyo	965	40	.00829	945	45	.00952	.00125 05
Green River, Wyo	995	40	.00804	975	45	.00923	.00119 05
Rock Spgs., Wyo	1010	41	.00812	990	46	.00929	.00117 05
Rawlins, Wyo	1129	42	.00744	1109	47	.00848	.00104 05
Laramie, Wyo	1246	44	.00706	1226	49	.00799	.00093 06
Red Buttes, Wyo	1255	44	.00702	1235	50	.00810	.00108 05
Cheyenne, Wyo	1303	45	.00691	1283	50	.00779	.00088 06
Orin Jct., Wyo. (proper)	1457	53	.00727	1437	59	.00807	.00080 05
Orin Jct., Wyo. When destined beyond	1457	45	.00618	1437	50	.00696	.00078 05
Denver, Colo. Via Gang & U. P.	1410	45	.00638	1390	50	.00719	.00081
Via Salt Lake, D. & R. G. R. R., Grand Jct., Colo., Mid. Ry., Colo. Spgs. and C. & S. Ry	1592	45	.00565	1572	50	.00636	05 .00071

STATIONS. TO	From Spokane.			From Portland.			Diff.
	Dist.	Rate 100 Lbs.	In Cents Ton Mile.	Dist.	Rate 100 Lbs.	In Cents Ton Mile.	
Via Salt Lake and D. & R. G. R. R.	1664	45	.00541	1644	50	.00608	05 .00067
Sidney, Neb.	1405	45	.00641	1385	50	.00722	05 .00081
Colton, Neb.	1411	46	.00652	1391	51	.00733	05 .00081
Lodge Pole, Neb.	1423	48	.00675	1403	53	.00756	05 .00081
Perdu, Neb.	1427	49	.00687	1407	54	.00768	05 .00081
Chappell, Neb.	1432	50	.90698	1412	55	.00779	05 .00081
Julesburg, Colo.	1447	50	.00691	1427	55	.00771	05 .00080
Big Springs, Neb.	1458	50	.00689	1438	55	.00765	05 .00076
Megeath, Neb.	1463	50	.00684	1443	55	.00762	05 .00078
Brule, Neb.	1469	50	.00688	1449	55	.00759	05 .00071
North Platte, Neb.	1528	50	.00654	1508	55	.00729	05 .00075
Kearney, Neb.	1623	50	.00616	1603	55	.00686	05 .00070
Grand Island, Neb.	1665	50	.00601	1845	55	.00669	05 .00068
Columbus, Neb.	1728	50	.00579	1708	55	.00644	05 .00065
Omaha, Neb. Via Granger and U. P.	1819	50	.00550	1799	55	.00611	05 .00061
Via Salt Lake, D. & R. G. R. R., Denver and U. P.	2233	50	.00448	2213	55	.00497	05 .00049
Via Salt Lake, Grand Jct., Colo. Spgs., C. & S. Ry., Denver, U. P.	2161	50	.00463	2141	55	.00514	05 .00051
Via Granger, U. P., Fremont and C. & N. W. Ry.	1815	50	.00551	1795	55	.00613	05 .00062
Via Salt Lake, D. & R. G. R. R., Colo. Spgs., C. R. I. & P. Ry.	2158	50	.00463	2138	55	.00514	05 .00051
Via Salt Lake, D. & R. G., Gr. Jct., Colo. Mid. Ry., Col. Spgs., C. R. I. & P. Ry.	2087	50	.00479	2067	55	.00532	05 .00053

This is a comparative statement of fir and pine lumber rates, Spokane basis, compared with Portland basis, routed via the O. R. & N. and Huntington, showing in cents per hundred pounds and per ton per mile to Short Line and Union Pacific points, terminating at Omaha. That covers down through the Short Line territory, the Huntington Gateway.

(Anderson exhibit 10 received in evidence, page 66.)

ANDERSON EXHIBIT No. 10.

Hood River
vs.
Spokane.

Dec. 1, 1907.

COMPARATIVE STATEMENT.

Showing distance in miles and rates in cents per 100 lbs. and per ton per mile on Fir and Pine Lumber from Hood River, Ore., and Spokane, Wash., in effect Dec. 1, 1907, and subsequent thereto.

To fifteen principal points on Oregon Short Line R. R. and twenty principal points on Union Pacific R. R.; also Orin Jct., Wyo., on the Colorado Southern Ry., Denver via Ogden and Granger Gateways and Omaha via all Gateways.

Basis of comparison is Transcontinental Freight Bureau East Bound Lumber Tariff S. I. 963, I. C. C. No. 850, effective Nov. 1, 1907, and Supplement No. 2 to the same tariff, effective Dec. 1, 1907.

Mileages are taken from July, 1907, number of Official Railway Guide, published by National Railway Publishing Company, No. 24 Park Place, New York City.

Statement is arranged so as to show a principal point in each territory taking a higher rate than the territory just preceding it.

TO STATIONS.	From Spokane.			From Hood River.			Diff.
	Dist.	Rate 100 Lbs.	In Cents Ton Mile.	Dist.	Rate 100 Lbs.	In Cents Ton Mile.	
Weiser, Idaho	447	30	.01342	361	30	.01662	.00320
Payette, Idaho	460	32	.01391	374	32	.01711	.00320
Arcadia, Ore	471	33	.01401	385	33	.01714	.00313
Parma, Idaho	482	34	.01411	396	34	.01717	.00306
Shoshone, Idaho	643	35	.01089	557	35	.01257	.00168
Minidoka, Idaho	692	35	.01012	606	35	.01155	.00143
Pocatello, Idaho	751	35	.00932	665	35	.01053	.00124
McCammon. Idaho	774	40	.01034	688	40	.01163	.0129
Salt Lake City, Utah	922	40	.00868	836	40	.00957	00089
Bancroft, Idaho	803	40	.00996	717	40	.01116	.00120 1
Soda Springs, Idaho	819	40	.00977	753	41	.01089	.00112 2
Cokeville, Wyo	882	40	.00907	796	42	.01055	.00148 2½
Kemmerer, Wyo	925	40	.00865	839	42.5	.01014	.00148 2½
Opal, Wyo	940	40	.00851	854	42.5	.00995	.00144 2½
Granger, Wyo	965	40	.00829	879	42.5	.00967	.00137 2½
Green River, Wyo	995	40	.00804	909	42.5	.00934	.00130 1½
Rock Springs, Wyo	1010	41	.00812	924	42.5	.00942	.00130 ½
Rawlings, Wyo	1129	42	.00744	1043	42.5	.00853	.00109 2½
Laramie, Wyo	1246	44	.00706	1160	46.5	.00802	.00962 2½
Cheyenne, Wyo	1303	45	.00691	1217	46.5	.00781	.00090 2½
Orin Jct., Wyo., Proper	1457	53	.00727	1371	55.5	.00810	.00083 2½
Orin Jct., when destined beyond	1457	45	.00618	1371	47.5	.00693	.00075 2½
Denver, Colo., via Granger, U. P	1410	45	.00638	1323	47.5	.00718	.00080 2½
Via Salt Lake, Grand Jct., Colo. Mid. Ry	1592	45	.00565	1506	47.5	.00631	.00066 2½
Colo. Spgs., and C. & S. Ry. via Salt Lake and D. & R. G. R. R	1664	45	.00541	1578	47.5	.00602	.00061 2½
Sidney, Neb	1405	45	.00641	1319	47.5	.00720	.00079

TO STATIONS.	From Spokane.			From Hood River.			Diff.
	Dist.	Rate 100 Lbs.	In Cents Ton Mile.	Dist.	Rate 100 Lbs.	In Cents Ton Mile.	
Colton, Neb.	1411	46	.00652	1325	48.5	.00732	2½ .00080
Lodge Pole, Neb.	1423	48	.00675	1337	50.5	.00755	2½ .00080
Perdue, Neb.	1427	49	.00687	1341	51.5	.00768	2½ .00081
Chappell, Neb.	1432	50	.00698	1346	52.5	.00780	2½ .00082
Julesburg, Neb.	1447	50	.00691	1361	52.5	.00771	2½ .00080
Big Springs, Neb.	1458	50	.00689	1372	52.5	.00765	2½ .00076
Megeath, Neb.	1463	50	.00684	1377	52.5	.00763	2½ .00079
Brule, Neb.	1469	50	.00688	1383	52.5	.00759	2½ .00071
No. Platte, Neb.	1528	50	.00654	1442	52.5	.00728	2½ .00074
Kearney, Neb.	1623	50	.00615	1537	52.5	.00683	2½ .00067
Grand Island, Neb.	1665	50	.00601	1579	52.5	.00665	2½ .00064
Columbus, Neb.	1728	50	.00579	1642	52.5	.00639	2½ .00050
Omaha, Neb., via Granger and U. P.	1819	50	.00550	1733	52.5	.00606	2½ .00056
Via Salt Lake, D. & R. G. R. R.	2233	50	.00448	2147	52.5	.00489	2½ .00041
Denver, U. P., via Salt Lake, D. & R. G. R. R., Gr. Jct., Colo. Mid. Ry., Colo. Spgs., C. S. Ry., Denve,r U. P.	2161	50	.00463	2075	52.5	.00506	2½ .00043
Via Granger, U. P., Fremont, C. & N. W. Ry.	1815	50	.00551	1729	52.5	.00607	2½ .00056
Via Salt Lake, D. & R. G. R. R., Colo. Spgs., C. R. I. & P. R. R.	2158	50	.00463	2072	52.5	.00507	2½ .00044
Via Salt Lake, D. & R. G. R. R., Gr. Jct., Colo. Mid. Ry., Colo. Spgs., C. R. I. & P. Ry.	2087	50	.00479	2001	52.5	.00525	2½ .00046

This is a comparative statement of the fir lumber rates Hood River territory, with Spokane territory, in cents per hundred and per ton per mile, to Short Line and Union Pacific points terminating at Omaha.

(Anderson exhibit 11 received in evidence, record page 67.)

ANDERSON EXHIBIT No. 11.

COMPARATIVE STATEMENT.

O. R. & N. Co.
O. S. L. R. R.
U. P. R. R.
Old Rate Basis
vs. Canadian Pacific Ry.

Showing distance in miles and prevailing rates on fir lumber in cents per 100 pounds and in mills per ton per mile from Portland, Oregon, via O. R. & N. Co. to seventeen principal points on O. S. L. R. R. or U. P. R. R. beginning with 35 cent rate territory and extending as far east as Omaha; and from Vancouver, B. C., to seventeen principal points on Canadian Pacific Railway, situated the same relative distance from Vancouver, B. C., that the O. S. L. and U. P. points are from Portland, Oregon.

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O. R. & N. vs. Canadian Pacific.

From Portland, Ore. To	Dist. in Miles.	Old Basis Rate	From Vancouver To	Dist. in Miles.	Rate	Diff.
Glenns Ferry, Idaho...	571	35 .01226	Canmore, Alberta....	575	35 .01217	*.00009
Gooding, Idaho.....	607	35 .01153	Morley, Alberta.....	601	35½ .01181	.00028
Shoshone, Idaho.....	623	35 .01124	Cochrane, Alberta....	620	36½ .01177	.00053
Minidoka, Idaho.....	672	35 .01042	Strathmore, Alberta..	677	37 .01093	.00051
American Falls, Idaho	705	35 .00993	Gleichen, Alberta....	698	38 .01088	.00895
Pocatello, Idaho.....	731	35 .00958	Bassano, Alberta....	725	38½ .01062	.00104
McCammon, Idaho....	754	40 .01061	Brooks, Alberta.....	756	39 .01032	*.00029
Lava, Idaho.....	768	40 .01042	Tilley, Alberta.....	769	40 .01040	*.00002
Collinston, Utah.....	825	40 .00970	Medicine Hat, Sask...	822	40 .00973	.00003
Green River, Wyo....	975	40 .00821	Swift Current, Sask..	972	40 .00823	.00002
Creston, Wyo.....	1080	40 .00741	Moose Jaw, Sask.....	1083	40 .00739	*.00002
Ft. Steele, Wyo.....	1124	40 .00712	Regina, Sask.....	1124	40 .00712	.....
Kimball, Neb.....	1348	40 .00593	Brandon, Man.....	1349	40 .00593	.....
Paxton, Neb.....	1477	50 .00677	Winnipeg, Man.....	1482	40 .00540	.00137
Gibbon, Neb.....	1616	50 .00619	Kenora, Ont.....	1615	45 .00557	.00062
Valley, Neb.....	1764	50 .00567	Ignac, Ont.....	1760	45 .00511	.00056
Omaha, Neb.....	1799	50 .00556	English, Ont.....	1796	45 .00501	.00055

*Difference favor of Portland, Oregon; balance favor of Vancouver, B. C.

This is a comparative statement of fir lumber rates, Portland, compared with points equi-distant on the Canadian Pacific, from Vancouver, showing cents per hundred, and mills per ton per mile. That is a comparison on the old rate basos, taking Vancouver, British Columbia and Portland, Oregon, as a comparative point.

(Anderson exhibit 12 received in evidence, record page 67.)

ANDERSON EXHIBIT No. 12.

COMPARATIVE STATEMENT.

O. R. & N. Co.
O. S. L. R. R.
U. P. R. R.
New Rate Basis } vs. Canadian Pacific Ry.

Showing distance in miles and proposed rates on fir lumber in cents per 100 pounds and mills per ton per mile from Portland, Oregon, via O. R. & N. Co. to seventeen principal points on O. S. L. R. R. and U. P. R. R. beginning with 35 cent rate territory and extending as far east as Omaha; and from Vancouver, B. C., to seventeen principal points on Canadian Pacific Railway, situated the same relative distance from Vancouver that the O. S. L. and U. P. points are from Portland, Oregon.

Page 2.

O. R. & N. vs. CANADIAN PACIFIC.

From Portland, Ore. To	Dist. in Miles.	New Basis Rate	From Vancouver To	Dist. in Miles.	Rate	Diff.
Glenns Ferry, Idaho...	571	35 .01226	Canmore, Alberta....	575	35 .01217	†.00009
Gooding, Idaho.....	607	35 .01153	Morely, Alberta.....	601	35½ .01181	*.00028
Shoshone, Idaho.....	623	35 .01124	Cochrane, Alberta....	620	36½ .01177	*.00053
Minidoka, Idaho.....	672	35 .01042	Strathmore, Alberta..	677	37 .01093	*.00051
American Falls, Idaho	705	35 .00993	Gleichen, Alberta....	698	38 .01089	*.00096
Pocatello, Idaho.....	731	35 .00958	Bassano, Alberta....	725	38½ .01062	*.00104
McCammon, Idaho....	754	40 .01061	Brooks, Alberta.....	756	39 .01032	†.00029
Lava, Idaho.....	768	40 .01042	Tilley, Alberta.....	769	40 .01040	†.00002
Collinston, Utah.....	825	40 .00970	Medicine Hat, Sask...	822	40 .00973	*.00003
Green River, Wyo....	975	45 .00923	Swift Current, Sask..	972	40 .00823	†.00100
Creston, Wyo.....	1080	47 .00870	Moose Jaw, Sask.....	1083	40 .00739	†.00131
Ft. Steele, Wyo.....	1124	47 .00836	Regina, Sask.....	1124	46 .00712	†.00124
Kimball, Neb.....	1348	50 .00742	Brandon, Man.....	1349	40 .00593	†.00149
Paxton, Neb.....	1477	55 .00745	Winnipeg, Man.....	1482	40 .00540	†.00205
Gibbon, Neb.....	1616	55 .00681	Kenora, Sask.....	1615	45 .00557	†.00124
Valley, Neb.....	1764	55 .00624	Ignac, Ont.....	1760	45 .00511	†.00113
Omaha, Neb.....	1799	55 .00611	English, Ont.....	1796	45 .00501	†.00110

*Difference favor of Portland, Ore.
†Difference favor of Vancouver, B. C.

This is the same sort of statement for the Canadian Pacific, Vancouver, B. C., versus Portland, Oregon, by the O. R. & N., new basis, cents per hundred and rate per ton per mile, Union Pacific and Short Line points.

(Anderson exhibit 13 received in evidence, record page 68.)

ANDERSON EXHIBIT No. 13.

COMPARATIVE STATEMENT.

COAST RATE BASIS.

Showing distance in miles and rates on Fir Lumber in cents per 100 pounds and mills per ton per mile from Portland, Oregon, via Northern Pacific Railway to twenty-six principal points on main line of Northern Pacific Railway, De Smet, Mont., to St. Paul, Minnesota, inclusive.

The extreme limits are shown on 35 and 40 cent territory under prevailing basis and 35, 37, 40, 45 and 50 cent territory under proposed basis; also a principal point in each territory taking a higher rate than the territory just preceding it.

Basis of comparison is N. P. Local Lumber Tariff No. 20285, I. C. C. No. B-479, De Smet to Miles City, Mont.; Tariff No. 23275, I. C. C. No. A-3095, Miles City to St. Paul, inclusive; also Transcontinental Lumber Tariff S. R. 662, I. C. C. No. 564, Butte, Mont., to St. Paul, inclusive. These cover prevailing rates, and the following cover proposed rates:

N. P. Local Lumber Tariff 24055, I. C. C. No. A-3432, De Smet, Mont., to Mont.-Dakota State Line, and G. N. Joint Lumber Tariff No. 24075, G. N. I. C. C. No. A-2667, Montana-Dakota State Line to Spiritwood, N. D.; Transcontinental Lumber Tariff S. R. 963, I. C. C. No. 850, Fargo, N. D., to St. Paul, Minn., inclusive.

Mileages in all but two instances, viz.: Homestake, Mont., and Waldon, N. D., are taken from July, 1907, Number of Official Railway Guide published by National Railway Publishing Company, No. 24 Park Place, New York; Homestake and Waldon mileage taken from N. P. Ry. Official Dist. Table No. 23300, I. C. C. No. A-3245.

NORTHERN PACIFIC.

Stations From	Dist. in Miles	Stations To	Old		New		Diff.
			Cents per 100 lbs.	Mills per ton per mile	Cents per 100 lbs.	Mills per ton per mile	
Portland, Ore.	791	De Smet, Mont.	34	.00860	35	.00885	.00025
Portland	798	Missoula, Mont.	35	.00877	35	.00877	.....
Portland	924	Butte, Mont	35	.00758	35	.00758	.....
Portland	932	Homestake	35	.00751	36	.00773	.00022
Portland	957	Whiteshall	35	.00731	37	.00773	.00042
Portland	996	Logan	35	.00703	37	.00743	.00040
Portland	1045	Livingston	35	.00669	37	.00708	.00039
Portland	1064	Springdale	35	.00658	38	.00714	.00056
Portland	1120	Columbus	35	.00625	39	.00696	.00071
Portland	1145	Laurel	35	.00611	40	.00699	.00088
Portland	1160	Billings	35	.00603	40	.00690	.00087
Portland	1173	Huntley	35	.00597	41	.00699	.00102
Portland	1213	Custer	35	.00577	42	.00692	.00115
Portland	1262	Forsythe	35	.00555	43	.00681	.00126
Portland	1307	Miles City	35	.00536	44	.00673	.00137
Portland	1386	Glendive	40	.00577	45	.00649	.00072
Portland	1427	Beach, N. D	40	.00561	45	.00631	.00070
Portland	1436	Sentinel Butte	40	.00557	46	.00641	.00084
Portland	1446	Waldon	40	.00553	47	.00650	.00097
Portland	1492	Dickinson	40	.00536	47½	.00637	.00101
Portland	1602	Bismarck	40	.00499	48½	.00605	.00106
Portland	1709	Jamestown	40	.00468	48½	.00509	.00041
Portland	1720	Spiritwood	40	.00465	50	.00581	.00116
Portland	1802	Fargo, N. D	40	.00444	50	.00555	.00111
Portland	1976	St. Cloud, Minn.	40	.00405	50	.00507	.00102
Portland	2052	St. Paul	40	.00390	50	.00487	.00097

This is a statement of fir lumber rates out of Portland on the Northern Pacific to various points as far east as St. Paul, showing the old and the new basis in cents per hundred and per ton per mile.

(Anderson exhibit 14 received in evidence, record page 68.)

ANDERSON EXHIBIT No. 14.

Portland, Ore.
Hood River, Ore.
Baker City, Ore.
vs.
Louisiana,
Texas.

Equal Mileage Basis

To Denver, Colorado.

COMPARATIVE STATEMENT.

Showing rates in cents per 100 pounds and per ton per mile on Yellow Pine Lumber from eight principal shipping points within the State of Louisiana (West of Mississippi River) and Texas, to Denver, Colo., as compared with rates on Fir and Pine Lumber to points equal distant from Portland, Hood River and Baker City, Ore., both prior and subsequent to November 1st, 1907, being designated in statement as "Old Rates" and the rates subsequent to November 1st designated as "New Rates."

Basis of Comparison is Transcontinental Freight Bureau East Bound Lumber Tariff S. R. 662, I. C. C. 564, effective April 15, 1905, and S. R. 963, I. C. C. No. 850, effective November 1st, 1907; and M. K. & T. Ry. System Tariff 2975, I. C. C. A-2103, effective 12/13/04. Texas & Paco Tariff No. 8500-H, I. C. C. No. 792, effective June 1st, 1901.

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PORTLAND VS. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Denver from			From Portland on Equal Mileage Basis to				
Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	Stations.	Dist. in Miles.	Basis.	Rate in cts. per 100 lbs. per ton mile.	Diff.
(B) Jacksonville, Tex	978	34 .00695	Green River, Wyo.	975	Old	40 .00821	6 .00126
					New	45 .00923	11 .00228
(B) Palestine, Tex.	1002	34 .00679	Rock Springs, Wyo.	990	Old	40 .00923	6 .00129
					New	46 .00929	12 .00250
(C) Shreveport, La	1024	34 .00664	Point of Rocks, Wyo.	1015	Old	40 .00788	6 .00129
					New	46 .00906	12 .00242
(C) Texarkana, Tex	1049	34 .00648	Bitter Creek, Wyo.	1035	Old	40 .00773	6. .00125
					New	46 .00889	12 .00241
(B) Trinity, Tex.	1067	34 .00637	Wamsutter, Wyo.	1068	Old	40 .00749	6 .00112
					New	47 .00880	13 .00243
(A) Houston, Tex.	1099	34 .00619	Rawlins, Wyo.	1109	Old	40 .00721	6 .00102
					New	47 .00848	13 .00229
(C) Alexandria, La	1156	34 .00588	Hanna, Wyo.	1149	Old	40 .00616	6 .00108
					New	48 .00836	14 .00248
(C) Donaldsville, La	1286	34 .00529	Cheyenne, Wyo.	1283	Old	40 .00624	6 .00095
					New	50 .00779	16 .00250

NOTE.

A.—International & Gr. Nor. Ry., via Ft. Worth, Tex., and F. W. & D. C. Ry.

B.—Same as above, but via Minneola, Tex., Pac. Ry., Ft. Worth and Ft. W. & D. C. Ry.

C.—Texas and Pacific Ry., via Ft. Worth, Tex., and Ft. W. & D. C. Ry.

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HOOD RIVER VS. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Denver from			From Hood River, Ore., on Equal Mileage Basis, to				
Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. per ton mile.	Diff.
(B) Jacksonville, Fla.	978	34 .00695	Bitter Creek, Wyo.	969	Old	40 .00826	6 .00131
					New	43½ .00898	9½ .00203
(B) Palestine, Tex.	1002	34 .00679	Wamsutter, Wyo.	1002	Old	40 .00798	6 .00119
					New	44½ .00888	10½ .00209
(C) Shreveport, La.	1024	34 .00664	Creston, Wyo.	1014	Old	40 .00789	6 .00125
					New	44½ .00878	10½ .00214
(C) Texarkana, Tex.	1049	34 .00648	Rawlins, Wyo.	1043	Old	40 .00767	6 .00119
					New	44½ .00853	10½ .00205
(B) Trinity, Tex.	1067	34 .00637	Ft. Steele, Wyo.	1058	Old	40 .00756	6 .00119
					New	44½ .00841	10½ .00204
(A) Houston, Tex.	1099	34 .00619	Allen, Wyo.	1099	Old	40 .00728	6 .00109
					New	45½ .00828	11½ .00209
(C) Alexandria, La.	1156	34 .00588	Laramie, Wyo.	1160	Old	40 .00690	6 .00102
					New	46½ .00802	12½ .00214
(C) Donaldsonville, La.	1286	34 .00529	Kimball, Neb.	1282	Old	40 .00624	6 .00095
					New	47½ .00772	13½ .00243

NOTE.

A.—International and Gt. Nor. Ry., via Ft. Worth, Tex., and Ft. W. & D. C. Ry.

B.—Same as above, but via Minneola, Tex., and Tex. Pac. Ry., Ft. Worth, Tex., and Ft. W. & D. C. Ry.

C.—Texas and Pacific Ry., via Ft. Worth, Tex., and Ft. W. & D. C. Ry.

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BAKER CITY VS. HOOD RIVER AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Denver from			From Baker City, Ore., on Equal Mileage Basis to				
Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. per ton mile.	Diff.
(B) Jacksonville, Fla.	978	34 .00695	Bushnell, Neb.	979	Old	35 .00705	1 .00010
					New	40 .00817	6 .00112
(B) Palestine, Tex.	1002	34 .00679	Kimball, Neb.	991	Old	35 .00706	1 .00027
					New	40 .00807	6 .00128
(C) Shreveport, La.	1024	34 .00664	Sidney, Neb.	1028	Old	35 .00706	1 .00017
					New	40 .00778	6 .00114
(C) Texarkana, Tex.	1049	34 .00648	Lodge Pole, Neb.	1046	Old	40 .00765	6 .00117
					New	43 .00822	9 .00174
(B) Trinity, Tex.	1067	34 .00637	Julesburg, Colo.	1070	Old	40 .00748	6 .00111
					New	43 .00804	9 .00167
(A) Houston, Tex.	1099	34 .00619	Ogelalla, Neb.	1100	Old	40 .00727	6 .00108
					New	43 .00782	9 .00163
(C) Alexandria, La.	1156	34 .00588	No. Platte, Neb.	1151	Old	40 .00695	6 .00107
					New	43 .00747	9 .00159
(C) Donaldsonville, La.	1286	34 .00529	Grand Island, Neb	1288	Old	40 .00621	6 .00092
					New	43 .00668	9 .00139

NOTE.

A.—International and Gt. Nor. Ry., via Ft. Worth, Tex., and Ft. W. & D. C. Ry.

B.—Same as above, but via Minneola, Tex., and Tex. Pac. Ry., Ft. Worth, Tex., and Ft. W. & D. C. Ry.

C.—Texas and Pacific Ry., via Ft. Worth, Tex., and Ft. W. & D. C. Ry.

This is a comparative statement of fir lumber rates, from Louisiana and Texas points to Denver, Colorado, as compared with rates from Portland, Hood River and Baker City to points equi-distant with the others, based on the old and the new basis, in cents per hundred and per ton per mile.

(Anderson exhibit 15 received in evidence, record page 69.)

ANDERSON EXHIBIT No. 15.

Portland, Ore., Hood River, Baker City,	Equal Mileage Basis.
vs.	
Louisiana, Texas, Georgia, Florida.	To Omaha.

COMPARATIVE STATEMENT.

Showing rates in cents per 100 pounds and per ton per mile on yellow pine lumber from eleven principal shipping points within the States of Texas, Louisiana, Georgia and Florida, to Omaha, Nebraska, as compared with rates on fir and pine lumber to points equa-distant from Portland, Hood River and Baker City, Oregon, both prior to and subsequent to November 1st, 1907; the rates prior to November 1st being designated in statement as "Old Rate" and the rates subsequent to November 1st designated as "New Rate."

Basis of Comparison is Transcontinental Freight Bureau East Bound Tariff S. R. 662, I. C. C. 564, effective April 15th, 1905, and S. R. 963, I. C. C. 850, effective November 1st, 1907; and Southern Railway Company Tariff 4542, I. C. C. No. 9265, effective March 14th, 1905, Kansas City Southern Tariff No. 216-D, I. C. C. No. 1509, effective April 1st, 1904.

PORTLAND vs. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Omaha, Neb., From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. and ton mile.	From Portland, Ore., Equal Mileage Basis To Stations.	Dist. in Miles.	Basis.	Rate in cts. per 100 lbs. and ton mile.	Diff.
Kansas City Southern Ry., via Kansas City, K. C., St. J. & C. B. Ry.							
					Old	35	12
Texarkana, Tex...	683	23 .00673	Minidoka, Idaho...	672		.01042	.00369
					New	35	12
						.01042	.00369
					Old	40	17
Shreveport, La....	755	23 .00609	McCammon, Idaho.	754		.01061	.00452
					New	40	40
						.01061	.00452
					Old	40	17
Mansfield, La.....	786	23 .00585	Bancroft, Idaho...	783		.01022	.00417
					New	40	17
						.01022	.00417
					Old	40	17
Bon Ami, La.....	887	23 .00519	Sage, Wyo.....	882		.00907	.00388
					New	42	19
						.00952	.00433
					Old	40	17
Beaumont, Tex...	961	23 .00479	Granger, Wyo.....	945		.00847	.00368
					New	45	22
						.00952	.00473
Houston, East and West Texas Ry., via Shreveport, K. Ct. & S. Ry., Kas. City-K. C., St. J. & C. B. Ry.							
					Old	40	17
Logansport, La...	794	23 .00579	Bancroft, Idaho...	783	New	.01022	.00423
						40	17
						.01022	.00423
					Old	40	17
Nacogdoches, Tex.	847	23 .00543	Pegram, Idaho....	847		.00945	.00402
					New	42	19
						.00992	.00449

PORTLAND vs. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Omaha, Neb. From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. and ton mile.	From Portland, Ore., Equal Mileage Basis To Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs and ton mile.	Diff.
					Old	40	17
Moscow, Tex.....	898	23	Salt Lake, Utah..	902		.00887	.00375
		.00512			New	40	17
						.00887	.00375
					Old	40	17
Houston, Texas...	986	23	Rock Springs, Wyo	990		.00808	.00320
		.00467			New	46	23
						.00929	.00462
Southern Ry. Co., via Louisville, Ky., and St. Louis, Mo. and Mo. Pac. Ry.							
					Old	50	19
Savannah, Ga.....	1523	31	Maxwell, Neb.....	1522		.00657	.00256
		.00401			New	55	24
						.00723	.00322
					Old	50	19
Jacksonville, Fla..	.....	31	Overton, Neb.....	1579		.00633	.00241
		.00392			New	55	24
						.00696	.00304

HOOD RIVER vs. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Omaha, Neb. From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. and ton mile.	From Hood River, Ore., Equal Mileage Basis To Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. and ton mile.	Diff.
Kansas City Sou. Ry., via Kansas City and K. C. St. J. & C. B. R. R.							
					Old	40	17
						.01163	.00490
Texarkana, Tex...	683	23	McCammon, Idaho.	688	New	40	17
		.00673				.01163	.00490

HOOD RIVER vs. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Omaha, Neb, From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. and ton mile.	From Hood River, Ore., Equal Mileage Basis To Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. and ton mile.	Diff.
					Old	40 .01047	17 .00438
Shreveport, La. . . .	755	23 .00609	Montpelier, Idaho. .	764	New	42 .01099	19 .00490
					Old	40 .01024	17 .00439
Mansfield, La.	786	23 .00585	Pegram, Idaho	781	New	42 .01076	19 .00491
					Old	40 .00910	17 .00391
Bon Ami, La.	887	23 .00519	Granger, Wyo.	879	New	42½ .00967	19½ .00418
					Old	40 .00819	17 .00340
Beaumont, Tex . . .	961	23 .00479	Bitter Creek, Wyo.	969	New	43½ .00898	20½ .00419
Houston, East and West Texas Ry., via Shreveport, K. C. & S. Ry., Kansas City, K. C. St. J. & C. B. Ry.							
					Old	40 .01005	17 .00426
Logansport, La. . . .	794	23 .00579	Cokeville, Wyo. . . .	796	New	42 .01055	19 .00476
					Old	40 .00952	17 .00408
Nacogdoches, Tex .	847	23 .00543	Diamondville, Wyo.	840	New	42½ .01012	19½ .00469
					Old	40 .00880	17 .00368
Moscow, Tex.	898	23 .00512	Green River, Wyo..	909	New	42½ .00935	19½ .00423

HOOD RIVER vs. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Omaha, Neb, From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. and ton mile	From Hood River Ore., Equal mileage Basis To Stations.	Dist. in Miles.	Basis.	Rate in cts. per 100 lbs. and ton mile.	Diff.
					Old	40 .00798	17 .00331
Houston, Tex.	986	23 .00467	Wamsutter, Wyo. .	1002	New	44½ .00888	21½ .00421
Southern Ry. Co., via Louisville, Ky., St. Louis, Mo., and Mo. Pac. Ry.							
					Old	50 .00657	19 .00256
Savannah, Ga.	1523	31 .00401	Elm Creek, Neb . . .	1522	New	55 .00723	24 .00322
					Old	50 .00633	19 .00241
Jacksonville, Fla . .	1581	31 .00392	Grand Island, Neb .	1579	New	55 .00696	.24 .00304

BAKER CITY vs. TEXAS & LOUISIANA.

EQUAL MILEAGE BASIS.

To Omaha, Neb., From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. and ton mile.	From Baker City, Ore., Equal Mileage Basis To Stations.	Dist. in Miles	Basis.	Rate in cts. per 100 lbs. per ton mile.	Diff.
Kansas City Sou. Ry. via Kansas City and K. C. St. J. & C. B. R. R.							
					Old	35 .01032	12 .00359
Texarkana, Tex. . .	683	23 .00673	Bitter Creek, Wyo.	678	New	36 .01062	13 .00389
					Old	35 .00931	12 .00322
Shreveport, La. . . .	755	23 .00609	Rawlins, Wyo.	752	New	37 .00984	14 .00375

BAKER CITY vs. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Omaha, Neb., From Stations	Dist. in miles.	Rate in cts. per 100 lbs. and ton mile.	From Baker City, Ore., Equal Mileage Basis, to Stations.	Dist. in miles.	Basis.	Rate in cts. per 100 lbs. and ton mile.	Diff.
Mansfield, La.	786	23 .00585	Dana, Wyo.	783	Old New	35 .00914 38 .00971	12 .00329 15 .00386
Bon Ami, La.	887	23 .00519	Hermosa, Wyo. . . .	887	Old New	35 .00789 39 .00879	12 .00270 16 .00360
Beaumont, Tex. . .	961	23 .00479	Egbert, Wyo.	958	Old New	35 .00736 40 .00835	12 .00257 17 .00356
Houston, East and West Texas Ry. via Shreveport, K. C. & St. Ry., Kas. City-K. C. St. J. & C. B. Ry.							
Logansport, La. . .	794	23 .00579	Hanna, Wyo.	792	Old New	35 .00884 38 .00960	12 .00305 15 .00381
Nacogdoches, Tex.	847	23 .00543	Lookout, Wyo. . . .	841	Old New	35 .00832 39 .00927	12 .00289 16 .00384
Moscow, Tex.	898	23 .00512	Granite Canon. . . .	907	Old New	35 .00772 39 .00860	12 .00260 16 .00348
Houston, Tex.	986	23 .00467	Kimball, Wyo.	991	Old New	35 .00706 40 .00807	12 .00239 17 .00340

BAKER CITY vs. TEXAS AND LOUISIANA.

EQUAL MILEAGE BASIS.

To Omaha, Neb., From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. and ton mile.	From Baker City, Ore., Equal Mileage Basis To Stations	Dist. in miles.	Basis.	Rate in cts. per 100 lbs and ton mile	Diff.
Southern Ry. Co., via Louisville, Ky., St. Louis, Mo. and Mo. Pac. Ry., C. & N. W. Ry.							
					Old	50	19
Savannah, Ga....	1523	31 .00401	Arcadia, Iowa.....	1526		.00655	.00254
					New	51 .00668	20 .00267
					Old	50	19
Jacksonville, Fla..	1531	31 .00392	Ogden, Iowa.....	1580		.00633	.00241
					New	53 .00674	22 .00282

This is a comparative statement of lumber rates, from Louisiana, Texas, Georgia and Florida points to Omaha, Nebraska, with rates from Portland, Hood River and Baker City on an equal mileage basis, showing the old and the new rate, in cents per hundred, and in mills per ton per mile.

(Anderson exhibit 16 received in evidence, record page 69.)

ANDERSON EXHIBIT No. 16.

Portland, Oregon Hood River, Oregon, Baker City, Oregon.	Equal Mileage Basis.
vs.	
Louisiana, Texas, Georgia, Florida.	To Chicago, Illinois.

COMPARATIVE STATEMENT.

Showing rates in cents per 100 pounds and per ton per mile on yellow pine lumber from nine principal shipping points within the State of Texas, Louisiana, Georgia and Florida, to Chicago, Ill., as compared with rates of fir and pine lumber to points equa-distant from Portland, Hood River and Baker City, Ore., both prior and subsequent to November 1st, 1907; the rates prior to November 1st being designated in Statement as "Old Rate" and the rates subsequent to November 1st designated as "New Rate."

Basis of comparison is Transcontinental Freight Bureau East Bound Lumber Tariffs S. R. 662, I. C. C. No. 564, effective August 15, 1905, and S. R. 963, I. C. C. No. 850, effective November 1st, 1907; and Southern Ry. Co. Tariff No. 4542, I. C. C. No. 9265, effective May 14, 1905, and Cotton Belt Tariff No. 4765, I. C. C. 2682, effective August 1st, 1907.

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EQUAL MILEAGE BASIS.

To Chicago, Ill., From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	From Baker City, Ore., Equal Mileage Basis To Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. per ton mile.	Diff.
St. L. & S. W. Ry., via St. Louis, and Wabash R. R.					Old	35	
						.00913	
Camden, Ark.....	768	26	Ft. Steele, Wyo....	767	New	37	
		.00677				.00965	
					Old	35	
						.00862	
Stamps, Ark.....	816	26	Med. Bow, Wyo...	812	New	38	
		.00637				.00936	
					Old	35	
						.00832	
Texarkana, Tex...	850	26	Lookout, Wyo.....	841	New	39	
		.00612				.00951	
					Old	35	
						.00789	
Shreveport, La....	882	26	Hermosa, Wyo....	887	New	39	
		.00590				.00879	
					Old	35	
						.00756	
Pittsburg, Tex....	923	26	Cheyenne, Wyo....	926	New	40	
		.00563				.00864	
					Old	35	
						.00693	
Jacksonville, Tex..	1008	26	Potter, Neb.....	1009	New	40	
		.00515				.00793	
					Old	40	
						.00727	
Monterey, Tex....	1090	26	Ogalalla, Neb.....	1100	New	43	
						.00782	
Southern Ry. Co., via Louisville, Ky., Chicago, Inds. & Lou. Ry.					Old	40	
						.00740	
Savannah, Ga.....	1086	26	Big Springs, Neb...	1081	New	43	
		.00479				.00796	
					Old	40	
						.00695	
Jacksonville, Fla...	1144	26	North Platte, Neb..	1151	New	43	
		.00455				.00747	

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EQUAL MILEAGE BASIS.

To Chicago, Ill., From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	From Hood River, Ore., Equal Mileage Basis To Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. per ton mile.	Diff.
St. L. & S. W. Ry., via St. Louis, and Wabash R. R.					Old	40 .01047	.....
Camden, Ark.....	768	26 .00677	Montpelier, Idaho..	764	New	42 .01099	.....
					Old	40 .00980	.....
Stamps, Ark.....	816	26 .00637	Sage, Wyo.....	816	New	42 .01029	.....
					Old	40 .00937	.....
Texarkana, Tex...	850	26 .00612	Opal, Wyo.....	854	New	42½ .00995	.....
					Old	40 .00910	.....
Shreveport, La....	882	26 .00590	Granger, Wyo....	879	New	42½ .009672	.....
					Old	40 .00866	.....
Pittsburg, Tex....	923	26 .00563	Rock Springs, Wyo.	924	New	43½ .00942	.....
					Old	40 .00798	.....
Jacksonville, Tex..	1008	26 .00516	Wamsutter, Wyo..	1002	New	44½ .008882	.....
					Old	40 .00727	.....
Monterey, Tex....	1090	26	Allen, Wyo.....	1099	New	45½ .00828	.....
Southern Ry. Co., via Louisville, Ky., Chicago, Inds. & Lou. R. R.					Old	40 .00739	.....
Savannah, Ga.....	1086	26 .00479	Hanna, Wyo.....	1083	New	45½ .008392	.....
					Old	50 .00690	.....
Jacksonville, Fla..	1144	26 .00455	Laramie, Wyo.....	1160	New	46½ .00802	.....

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EQUAL MILEAGE BASIS.

To Chicago, Ill., From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	From Portland, Ore., Equal Mileage Basis To Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. per ton mile.	Diff.
St. Louis & S. W. Ry., via St. Louis, and Wabash R. R.					Old	40	.....
						.01041	.....
Camden, Ark.....	768	26	Lava, Idaho.....	768	New	40	.....
		.00677				.01041	.....
					Old	40	.....
						.00964	.....
Stamps, Ark.....	816	26	Montpelier, Idaho..	830	New	42	.....
		.00637				.01012	.....
					Old	42	.....
						.00945	.....
Texarkana, Tex...	850	26	Pegram, Idaho....	847	New	42	.....
		.00612				.00992	.....
					Old	40	.....
						.00907	.....
Shreveport, La....	882	26	Sage, Wyo.....	882	New	42	.....
		.00590				.00952	.....
					Old	40	.....
						.00870	.....
Pittsburg, Tex....	923	26	Opal, Wyo.....	920	New	44	.....
		.00563				.00956	.....
					Old	40	.....
						.00808	.....
Jacksonville, Tex..	1008	26	Rock Springs, Wyo.	990	New	46	.....
		.00516				.00929	.....
					Old	40	.....
						.00741	.....
Monterey, Tex....	1090	26	Creston, Wyo.....	1080	New	47	.....
						.00870	.....
Southern Ry. Co., via Louisville, Ky., Chicago, Inds. & Lou. Ry.					Old	40	.....
						.00741	.....
Savannah, Ga.....	1086	26	Creston, Wyo.....	1080	New	47	.....
		.00479				.00870	.....
					Old	40	.....
						.00702	.....
Jacksonville, Fla..	1144	26	Dana, Wyo.....	1140	New	48	.....
		.00455				.00842	.....

This is a comparative statement of the rates on lumber from Louisiana and Texas, Georgia and Florida points, to Chicago, Illinois, as against Portland, Hood River and Baker City on an equal mileage basis, showing rates, in cents per hundred and per ton per mile, both old and new.

By an equal mileage basis, I mean that the rates out of Portland, Hood River and Baker City are the same distance from those respective points as Chicago is from the Louisiana, Texas, Georgia and Florida points that I have.

I have a statement comparing rates from Hood River to Chicago with the Southern points.

(Anderson exhibit 17 received in evidence, record page 70.)

(ANDERSON EXHIBIT NO. 17)

Portland, Oregon,
Hood River, Oregon,
Baker City, Oregon,
} Equal Mileage Basis
Yellow Pine.

vs.

Louisiana,
Texas,
Georgia,
Florida.
} To Kansas City.

COMPARATIVE STATEMENT.

Showing rates in cents per 100 lbs. and per ton per mile on yellow pine lumber from seven principal shipping points within the states of Texas, Louisiana, Georgia and Florida, to Omaha, Nebraska, as compared with rates on fir and pine lumber to points equidistant from Portland, Hood River and Baker City, Ore., both prior and subsequent to Nov. 1st, 1907; the rates prior to Nov. 1st being designated in statement as "Old Rate" and the rates subsequent to Nov. 1st designated as "New Rate."

Basis of comparison is Trancontinental Freight Bureau East Bound Lumber Tariffs S. R. 662, I. C. C. 564, effective April 15th, 1905, and S. R. 963, I. C. C. 850, effective Nov. 1st, 1907; and So. Ry. Co. Tariff 4542-I. C. C. No. 9265, effective March 14, 1905; Kas. City Southern Lumber Tariff No. 216-D I. C. C. No. 1509, effective April 1st, 1904.

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YELLOW PINE—EQUA DISTANT.

To Kansas City, Mo. From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	From Portland, Ore., (Equa distant) To Stations.	Dist. in Miles.	Basis.	Rate in cts. per 100 lbs. per ton mile.	Diff.
Kansas City Southern Ry.							
			Medbury, Idaho...	559	Old	35 .01252	
Shreveport, La....	560	23 .00823			New	35 .01252	12 .00429
			Gooding, Idaho....	607	Old	35 .01153	
Converse, La.....	610	23 .00754			New	35 .01153	12 .00399
			Wapi, Idaho.....	688	Old	35 .01017	
Bon Ami, La.....	692	23 .00754			New	35 .01017	12 .00353
			Pocatello, Idaho...	731	Old	35 .00958	
Lake Charles, La..	742	23 .00620			New	35 .00958	12 .00338
			Bancroft, Idaho...	783	Old	35 .00894	12 .00309
Port Arthur, La...	786	23 .00585			New	40 .01022	17 .00437
Southern Ry.							
			Egbert, Wyo.....	1315	Old	40 .00608	10 .00153
Savannah, Ga.....	1318	30 .00455			New	50 .00760	20 .00305
			Brownson, Neb....	1377	Old	40 .00581	10 .00145
Jacksonville, Fla..	1376	30 .00436			New	50 .00719	20 .00273

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YELLOW PINE—EQUA DISTANT.

To Kansas City, Mo. From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	From Hood River, Ore., (Equa distant) To Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. per ton mile.	Diff.
Kansas City Southern Railway.							
			Shoshone, Idaho...	557	Old	35 .01257	
Shreveport, La....	560	23 .00823			New	35 .01257	12 .00434
			Minidoka, Idaho...	606	Old	35 .01155	
Converse, La.....	610	23 .00754			New	35 .01155	12 .00401
			McCammon, Iowa .	688	Old	40 .01163	
Bon Ami, La	692	23 .00664			New	40 .01163	17 .00499
			Soda Springs, Idaho.....	733	Old	40 .01091	17 .00471
Lake Charles, La..	742	23 .00620			New	41 .01119	18 .00499
			Pegram, Idaho....	781	Old	40 .01024	17 .00439
Port Arthur, La...	786	23 .00585			New	42 .01076	19 .00491
Southern Railway.							
			Sidney, Neb.....	1319	Old	40 .00607	10 .00152
Savannah, Ga.....	1318	30 .00455			New	47½ .00720	17½ .00265
			Big Springs, Neb..	1372	Old	45 .00656	15 .00220
Jacksonville, Fla..	1376	30 .00436			New	52½ .00765	22½ .00329

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YELLOW PINE—EQUA DISTANT.

To Kansas City, Mo. From Stations.	Dist. in Miles.	Rate in cts. per 100 lbs. per ton mile.	From Baker City, Ore., (Equa distant) To Stations.	Dist. in Miles.	Basis	Rate in cts. per 100 lbs. per ton mile.	Diff.
Kansas City Southern Ry.							
			Opal, Wyo.	563	Old	30	7
						.01066	.00243
Shreveport, La.	560	23			New	34	11
		.00823				.01208	.00385
			Green River	618	Old	35	12
						.01133	.00379
Converse, La.	610	23			New	35	12
		.00754				.01133	.00368
			Bitter Creek	678	Old	35	12
						.01032	.00368
Bon Ami, La.	692	23			New	36	13
		.00664				.01062	.00398
			Rawlins	752	Old	35	12
						.00904	.00284
Lake Charles, La.	742	23			New	37	14
		.00620				.00984	.00364
			Dana, Wyo.	783	Old	35	12
						.00893	.00308
Port Arthur, La.	786	23			New	38	15
		.00585				.00958	.00373
Southern Railway.							
			Clarks, Neb.	1321	Old	40	10
						.00606	.00151
Savannah, Ga.	1318	30			New	43	13
		.00455				.00651	.00196
			Rogers, Neb.	1374	Old	40	10
						.00582	.00146
Jacksonville, Fla.	1376	30			New	43	13
		.00436				.00626	.00190

It is a comparative statement on an equal mileage basis from Louisiana, Texas, Georgia and Florida points to Kansas City, as against rates from Portland, Hood River and Baker City, both old and new basis, in cents per hundred and per ton per mile.

(Anderson exhibit 18 received in evidence, record page 71.)

(ANDERSON EXHIBIT 18)

Yellow Pine vs. Fir Lumber } To Denver, Omaha, Kansas City, Chicago.

COMPARATIVE STATEMENT.

Showing mileage and rates in cents per 100 lbs. and per ton per mile on yellow pine lumber from Louisiana and Florida to Denver, Omaha, Kansas City and Chicago, as compared with past and present rates on fir lumber from Portland, Hood River and Baker City or Elgin to Denver, Omaha, Kansas City and Chicago.

Basis of comparison is Trans-Continental Freight Bureau East Bound Lumber Tariff S. R. 963, I. C. C. No. 850 effective November 1, 1907, S. R. 662, I. C. C. No. 564 effective April 15, 1905, and Southern Railway Co. Western Lumber Tariff No. One, I. C. C. No. 9265 effective March 14, 1905, Kansas City Southern Ry. Lumber Tariff No. 216-D, I. C. C. No. 1509 effective April 1, 1904, and Texas and Pacific Lumber Tariff No. 8500-H, I. C. C. No. 792 effective June 1, 1901.

Mileage compiled from July, 1907, number of Official Railway Guide published by National Railway Publication Co., No. 24 Park Place, New York.

TO DENVER, COLORADO.

From	Dist.	Rate in Cts. 100 lb		From	Dist.	Rate in Cts. 100 lb		Diff.
Texas & Pacific Ry.				Baker City, Ore.	1033	Old 35	.00678	1 .00090
Via Ft. Worth, Ft W.& D.C.Ry.						New 40	.00775	6 .00187
Alexandria, La.	1156	34	.00588	Hood River, Ore.	1324	Old 40	.00604	6 .00016
						New 47½	.00718	13½ .00130
Donaldsonville, La.	1286	34	.00529	Portland, Ore.	1390	Old 40	.00576	6 .00047
						New 50	.00719	16 .00190

TO OMAHA, NEBRASKA.

From	Dist.	Rate in Cts. 100 lb	T.M.	From	Dist.	Rate in Cts. 100 lb	T.M.	Diff.
Southern Ry. Co.				Portland, Ore.	1799	Old 50	.00556	19 .00164
Via Louisville and St. Louis						New 55	.00611	24 .00219
Mo. Pac. Ry.				Hood River, Ore.	1733	Old 50	.00519	19 .00127
Jacksonville, Fla.	1581	31	.00392			New 52½	.00606	21½ .00214
Savannah, Ga.	1523	31	.00401	Elgin, Ore.	1515	Old 40	.00528	9 .00127
						New 43	.00568	12 .00167

TO KANSAS CITY, MISSOURI.

Southern Ry. Co.				Portland, Ore.	2030	Old 50	.00492	20 .00049
Via Louisville and St. Louis						New 55	.00542	25 .00099
Mo. Pac. Ry Jacksonville, Fla.	1376	30	.00443	Hood River, Ore.	1964	Old 50	.00509	20 .00066
						New 52½	.00535	22½ .00092
Savannah, Ga.	1318	30	.00455	Baker City, Ore.	1673	Old 40	.00477	10 .00022
						New 43	.00514	13 .00059

TO CHICAGO, ILLINOIS.

From	Dist.	Rate in Cts.		From	Dist.	Rate in Cts.		Diff.
		100 lb	T. M.			100 lb	T. M.	
Southern Ry. Co.	.....	.....	.....	Portland, Ore.	2292	Old		24
						50	.00436	.....
Via Louisville, Ky						New		34
						60	.00524	.00069
Chgo. Inds. & Lou Ry.								
Jacksonville, Fla.	1144	26	.00455	Hood River, Ore.	2226	Old		24
						50	.00499	.00044
						New		31½
						57½	.00512	.00057
Savannah, Ga.	1086	26	.00479	Baker City, Ore.	1935	Old		24
						50	.00517	.00038
						New		27
						53	.00548	.00069

Number 18 is a comparative statement from points in Louisiana, Georgia and Florida, to Denver, Omaha, Kansas City, and Chicago, as against rates from Portland, Baker City and Hood River to those same points, the old and the new basis, cents per hundred and per ton per mile.

(Anderson exhibit 19 received in evidence, record page 71.)

(ANDERSON EXHIBIT NO. 19)

WHITE PINE.

Hermansville Wisconsin	Soo Line Local
vs.	
Portland Hood River Baker City	Equa distant.

COMPARATIVE STATEMENT.

Showing mileages and rates in cents per 100 lbs. and per ton per mile on White Pine Lumber from Hermansville, Wisconsin, to seventeen stations on Soo Line in Minnesota and North Dakota as compared with rates on fir and pine lumber to the same number of points equal distance from Portland, Hood River and Baker City, Oregon.

Basis of comparison is Minneapolis, St. Paul and Sault Ste. Marie Railway Company's Lumber, Lath and Shingle Tariff G. F. D. No. 7031, I. C. C. No. 1960 effective June 11, 1907, and Trans-Continental Freight Bureau East Bound Lumber Tariff S. R. 963, I. C. C. No. 850 effective November 1, 1907.

Mileages are taken from July, 1907, number of the Official Railway Guide, published by the National Railway Publication Co., No. 24 Park Place, New York.

WHITE PINE—EQUA DISTANT.
SOO LINE LOCAL vs. O. R. & N.

From Hermansville, Wisconsin, To (Equa distant)				From Portland, Oregon, To (Equa distant)				
Stations	Dist.	Rate in Cts.		Stations	Dist.	Rate in Cts.		Diff.
		100 lb	T.M.			B.S.	T.M.	
Paynesville,Minn.	404	10½	.00520	Huntington, Ore.	404	Old	25 .01238	14½
						New	25 .01238	.00718
Belgrade, Minn...	419	11	.00525	Weiser, Idaho....	427	Old	31 .01452	20 .00927
						New	30 .01405	19 .00880
Lowry, Minn.....	450	12	.00533	Arcadia, Ore.....	451	Old	35 .01552	23
						New	33 .01463	.01019
Elbow Lake,Minn	481	12½	.00520	Caldwell, Idaho..	477	Old	35 .01468	21 .00930
						New	35 .01468	22½ .00948
Nashau, Minn....	498	13	.00522	Mora, Idaho.....	500	Old	35 .01400	22
						New	35 .01400	.00878
Fairmont, N. D..	512	13½	.00527	Orchard.....	520	Old	35 .01346	21½
						New	35 .01346	.00839
Handkinson,N.D	527	15½	.00579	Orchard.....	520	Old	35 .01346	19½
						New	35 .01346	.00767
Wyndmere,N.D..	544	16	.00588	Mt. Home.....	541	Old	35 .01294	19
						New	35 .01294	.00706

WHITE PINE—EQUA DISTANT.
SOO LINE LOCAL vs. O. R. & N.

From Hermansville, Wisconsin, To (Equa distant)				From Portland, Oregon, To (Equa distant)				
Stations	Dist.	Rate in Cts.		Stations	Dist.	Rate in Cts.		Diff.
		100 lb	T.M.			B.S.	T.M.	
Lucca, N. D.....	585	17	.00581	Bliss, Idaho.....	594	Old	35 .01180	18
						New	35 .01180	.00599
Valley City.....	608	20	.00787	Gooding, Idaho...	607	Old	35 .01153	15
						New	35 .01153	.00366
Rogers, N. D....	622	21	.00675	Shoshone, Idaho..	623	Old	35 .01124	14
						New	35 .01124	.00449
Leal, N. D.....	628	22	.00701	Shoshone, Idaho..	623	Old	35 .01124	13
						New	35 .01124	.00423
Carrington,N.D..	673	23	.00684	Mindoka, Idaho..	673	Old	35 .01042	12
						New	35 .01042	.00358
Fessenden,N.D...	701	24	.00685	American Falls...	705	Old	35 .00993	11
						New	35 .00993	.00308
Anamoose.....	734	25	.00681	Pocatello.....	731	Old	35 .00958	10
						New	35 .00958	.00277
Minot, N. D.....	790	25	.00633	Bancroft.....	783	Old	40 .01022	15
						New	40 .01022	.00389

WHITE PINE—EQUA DISTANT.
SOO LINE LOCAL vs. O. R. & N.

From Hermansville, Wisconsin, To (Equa distant)				From Baker City, Oregon, To (Equa distant)				
Stations	Dist.	Rate in Cts.		Stations	Dist.	Rate in Cts.		Diff.
		100 lb	T.M.			B.S.	T.M.	
Paynesville,Minn.	404	10½	.00520	McCammon.....	397	Old	30 .01511	19½
						New	30 .01511	.00991
Belgrade, Minn...	419	11	.00525	Bancroft.....	426	Old	30 .01409	19
						New	30 .01409	.00884
Lowry, Minn.....	450	12	.00533	Soda Springs.....	442	Old	30 .01357	18 .00824
						New	31 .01403	19 .00870
ElbowLake,Minn	481	12½	.00520	Pegram.....	490	Old	30 .01224	17½ .00702
						New	32 .01306	18 .00786
Nashua, Minn....	498	13	.00522	Cokeville.....	505	Old	30 .01188	17 .00666
						New	32 .01267	18 .00745
Fairmont, N. D..	512	13½	.00527	Cokeville.....	505	Old	30 .01188	16½ .00661
						New	32 .01267	18½ .00740
Handkinson, N.D.	527	15½	.00579	Sage.....	525	Old	30 .01143	14½ .00564
						New	32 .01219	16½ .00640
Wyndmere,N.D..	544	16	.00588	Kemmerer.....	548	Old	30 .01095	14 .00507
						New	33 .01204	17 .00616
Lucca, N. D.....	585	17	.00581	Granger.....	588	Old	30 .01020	13 .00439
						New	35 .01190	18 .00609

WHITE PINE—EQUA DISTANT.
SOO LINE LOCAL vs. O. R. & N.

From Hermansville, Wisconsin, To (Equa distant)				From Baker City, Oregon, To (Equa distant)				
Stations	Dist.	Rate in Cts.		Stations	Dist.	Rate in Cts.		Diff.
		100 lb	T.M.			B.S.	T.M.	
Valley City	608	20	.00787	Green River	618	Old	35 .01133	15 .00346
						New	35 .01133	15 .00346
Rogers, N. D.	622	21	.00675	Green River	618	Old	35 .01133	14
						New	35 .01133	.00458
Leal, N. D.	628	22	.00701	Rock Springs	633	Old	35 .01106	13 .00405
						New	36 .01137	14 .00436
Carrington, N.D.	673	23	.00684	Bitter Creek	678	Old	35 .01032	12 .00348
						New	36 .01062	13 .00378
Fessenden, N.D.	701	24	.00685	Wamsutter	711	Old	35 .00985	11 .00300
						New	37 .01041	13 .00356
Anamose, N. D.	734	25	.00681	Creston	723	Old	35 .00968	10 .00287
						New	37 .01023	12 .00342
Minot, N. D.	790	25	.00633	Hanna	792	Old	35 .00884	10 .00251
						New	38 .00959	13 .00326
Portland	871	25	.00574	Laramie	869	Old	35 .00805	10 .00231
						New	39 .00898	14 .00324

WHITE PINE—EQUA DISTANT.
SOO LINE LOCAL vs. O. R. & N.

From Hermansville, Wisconsin, To (Equa distant)				From Hood River, Oregon, To (Equa distant)				
Stations	Dist.	Rate in Cts.		Stations	Dist.	Rate in Cts.		Diff.
		100 lb	T.M.			B.S.	T.M.	
Paynesville,Minn	404	10½	.00520	Notus	404	Old	35 .01732	24½
						New	35 .01732	.01212
Belgrade, Minn	419	11	.00525	Nampa	420	Old	35 .01667	24
						New	35 .01667	.01142
Lowry, Minn	450	12	.00533	Orchard	454	Old	35 .01542	23
						New	35 .01542	.01009
ElbowLake,Minn	481	12½	.00520	Mt. Home	475	Old	35 .01474	
						New	35 .01474	22½ .00954
Nashua, Minn	498	13	.00522	Medbury	493	Old	35 .01420	
						New	35 .01420	22 .0089
Fairmont, N. D	512	13½	.00527	Glenns Ferry	505	Old	35 .01386	
						New	35 .01386	21½ .00759
Handkinson,N.D	527	15½	.00579	Bliss	528	Old	35 .01326	
						New	35 .01326	19½ .00747
Wyndmere, N. D	544	16	.00588	Gooding	541	Old	35 .01294	
						New	35 .01294	19 .00706
Lucca, N. D	585	17	.00581	Kimama	589	Old	35 .01196	
						New	35 .01196	18 .00615

WHITE PINE—EQUA DISTANT.
SOO LINE LOCAL vs. O. R. & N.

From Hermansville, Wisconsin, To (Equa distant)				From Hood River, Oregon, To (Equa distant)				
Stations	Dist.	Rate in Cts.		Stations	Dist.	Rate in Cts.		Diff.
		100 lb	T.M.			B.S.	T.M.	
Valley City	608	'20	.00787	Minidoka	606	Old	35 .01155	
						New	35 .01155	15 .00368
Rogers, N. D	622	21	.00675	Wapi	622	Old	35 .01125	
						New	35 .01125	14 .00440
Leal, N. D.	628	22	.00701	Wapi	622	Old	35 .01125	
						New	35 .01125	11 .00424
Carrington, N.D.	673	23	.00684	Pocatello	665	Old	35 .01053	
						New	35 .01053	12 .00369
Fessenden, N.D.	701	24	.00685	Lava	702	Old	40 .01140	
						New	40 .01140	16 .00455
Anamose, N. D.	734	25	.00681	Soda Springs	733	Old	40 .01091	15 .00410
						New	41 .01118	16 .00437
Minot, N. D	790	25	.00633	Cokeville, Wyo.	796	Old	40 .01005	15 .00372
						New	42 .01055	17 .00422
Portland, N. D.	871	25	.00574	Granger	879	Old	40 .00910	15 .00336
						New	42½ .00967	17½ .00393

This is a comparative statement on an equi-distant basis, showing rates from Hermansville, Wisconsin, on the Soo Line to local points on that same line, as compared with rates from Portland, Hood River and Baker City, in cents per hundred and in mills per ton per mile, both old and new basis.

(Anderson exhibit 20 received in evidence, record page 72.)

ANDERSON EXHIBIT No. 20.

WHITE PINE.

Hermansville, Wisconsin—Soo Line Foreign.

vs.

Portland
Hood River
Baker City
} Equa Distant.

COMPARATIVE STATEMENT.

Showing mileages and rates in cents per 100 lbs. and per ton per mile on White Pine Lumber from Hermansville, Wisconsin, on Soo Line to eight principal points in the several states of South Dakota, Iowa, Nebraska, Kansas and Missouri, as compared with rates on fir and pine lumber to points of equal distance from Portland, Hood River and Baker City, Oregon.

Basis of comparison is Minneapolis, St. Paul and Sault Ste. Marie Ry. Co's Joint Lumber Tariff G. T. & D. No. 4801, I. S. C. C. No. 1249, effective June 1st, 1904, and Trans-Continental Freight Bureau East-bound Lumber Tariff S. R. 622, I. C. C. No. 564, effective April 15, 1905, and S. R. No. 963, I. C. C. No. 850, effective November 1, 1907.

Mileages are taken from July 1907, number of the Official Railway Guide, published by the National Railroad Publication Co., No. 24 Park Place, New York.

WHITE PINE—EQUA DISTANT.

SOO LINE FOREIGN vs. O. R. & N. Co.

From Hermansville, Wisconsin To			From Portland, Oregon To (Equa Distant.)				
STATIONS.	Dist. in miles	Rate in cts. per 100 lbs. per ton mile	STATIONS.	Dist. in miles	Basis	Rate in cts. per 100 lbs. per ton mile	Diff.
Via C. & N. W. Ry							
					Old	35 .01124	17 .00541
Des Moines, Iowa..	617	18 .00583	Shoshone, Idaho...	623	New	35 .01124	
					Old	35 .01179	
Watertown, S. D..	587	21.5 .00808	Bliss, Idaho.....	594	New	35 .01179	13.5 .00371
					Old	35 .01017	
Omaha, Neb.....	682	22.5 .00660	Wapi, Idaho.....	688	New	35 .01017	13.5 .00357
Via C. & N. W.-K. C. St. J. & C. B.							
					Old	40 .01001	17.5 .00446
St. Joe, Mo.....	811	22.5 .00555	Soda Springs.....	799	New	41 .01026	18.5 .00471
					Old	40 .00945	17.5 .00414
Leavenworth, Kas.	847	22.5 .00531	Pegram.....	847	New	42 .00992	19.5 .00461
					Old	40 .00907	17.5 .00392
Kansas City, Mo...	874	22.5 .00515	Sage.....	882	New	42 .00952	19.5 .00437
Via C. B. & Q.							
					Old	35 .01042	17.5 .00523
Burlington, Iowa..	675	17.5 .00519	Minidoka, Idaho...		New	35 .01042	
					Old	40 .00894	20.5 .00359
St. Louis, Mo.....	897	19.5 .00435	Fossil, Wyo.....		New	42 .00939	22.5 .00494

WHITE PINE—EQUA DISTANT.

SOO LINE FOREIGN vs. O. R. & N. Co.

From Hermansville, Wisconsin, To (Equa Distant)			From Hood River, Oregon, To (Equa Distant.)				
STATIONS	Dist. in miles	Rate in cts. per 100 lbs. per ton mile	STATIONS	Dist. in miles	Basis	Rate in cts. per 100 lbs. per ton mile	Diff.
Via C. & N. W. Ry.					Old	35 .01125	
Des Moines, Iowa..	617	18 .00583	Wapi, Idaho.....	622	New	35 .01125	17 .00542
					Old	35 .01188	13.5 .00380
Watertown, S. D..	587	21.5 .00808	Kimama, Idaho...	589	New	35 .01188	17.5 .00480
					Old	35 .01188	
Omaha, Neb.....	682	22.5 .00660	McCammon, Idaho.	688	New	35 .01188	17.5 .00480
Via C. & N. W.-K. C. St. J. & C. B.					Old	40 .00980	17.5 .00425
St. Joe, Mo.....	811	22.5 .00555	Sage.....	816	New	42 .01029	19.5 .00474
					Old	40 .00937	17.5 .00406
Leavenworth, Kas.	847	22.5 .00531	Opal, Wyo.....	854	New	42.5 .00995	20 .00464
					Old	40 .00910	17.5 .00395
Kansas City, Mo...	874	22.5 .00515	Granger, Wyo.....	879	New	42.5 .00967	20 .00452
Via C. B. & Q.					Old	35 .01053	
Burlington, Iowa..	675	17.5 .00519	Pocatello, Idaho...	665	New	35 .01053	17.5 .00534
					Old	40 .00880	20.5 .00445
St. Louis, Mo.....	897	19.5 .00435	Green River, Wyo.	909	New	42.5 .00934	23 .00499

WHITE PINE—EQUA DISTANT,
SOO LINE FOREIGN vs. O. R. & N. CO.

From Hermansville, Wisconsin, To (Equa Distant)			From Baker City, Oregon To (Equa Distant.)				
STATIONS.	Dist. in miles	Rate in cts. per 100 lbs. per ton mile	STATIONS.	Dist. in miles	Basis	Rate in cts. per 100 lbs. per ton mile	Diff.
Via C. & N. W. Ry.					Old	35 .01133	
Des Moines, Iowa..	617	18 .00583	Green River, Wyo.	618	New	35 .01133	17 .00550
					Old	30 .01020	8.5 .00212
Watertown, S. D..	587	21.5 .00808	Granger, Wyo.....	588	New	35 .01190	13.5 .00382
					Old	35 .01032	12.5 .00372
Omaha, Neb.....	682	22.5 .00660	Bitter Creek, Wyo.	678	New	36 .01062	13.5 .00402
Via C. & N. W.-K. C. St. J. & C. B.					Old	35 .00862	12.5 .00207
St. Joe, Mo.....	811	22.5 .00555	Medicine Bow, Wyo	812	New	38 .00936	15.5 .00381
					Old	35 .00832	12.5 .00301
Leavenworth, Kas.	847	22.5 .00531	Lookout, Wyo....	841	New	39 .00927	16.5 .00396
					Old	35 .00805	12.5 .00290
Kansas City, Mo...	874	22.5 .00515	Laramie, Wyo.....	869	New	39 .00898	16.5 .00383
Via C. B. & Q.					Old	35 .01032	17.5 .00513
Burlington, Iowa..	675	17.5 .00519	Bitter Creek, Wyo.	678	New	36 .01062	18.5 .00543
					Old	35 .00772	15.5 .00337
St. Louis, Mo.....	897	19.5 .00435	GraniteCanon, Wyo	907	New	39 .00860	19.5 .00425

This is a comparative statement showing the lumber rates from Hermansville, on the Soo Line, to points in Iowa, Dakota, Nebraska, Kansas and Missouri, as compared with points equi-distant from Portland, Hood River and Baker City, both old and new basis, in cents per hundred and mills per ton per mile.

(Anderson exhibit 21 received in evidence, record page 72.)

ANDERSON EXHIBIT No. 21.

DIFFERENTIAL STATEMENT.

COAST VS. SPOKANE RATE.

Tariffs S. R. 662 and 963 Comparisons.
I. C. C. 564 and I. C. C. 850.

Showing an increased differential in favor of Spokane basing points to various receiving points, the principal of which are as follows:

Chicago, Mississippi River and St. Louis Common points, an increase of 5c. per 100 lbs. on shingles, Cedar, Fir, Hemlock, Spruce and Larch lumber.

To Omaha and Common points, an increase of 5c. per 100 lbs. on shingles.

To Kansas City and Common points, an increase of 5c. per 100 lbs. on shingles, Fir, Hemlock, Spruce and Larch lumber.

To Denver, Cheyenne and Common points, an increase of 5c. per 100 lbs. on shingles, Pine, Fir, Hemlock, Spruce and Larch lumber.

To Salt Lake City and Common points, an increase of 5c. per 100 lbs. on Cedar lumber.

There is also an increase to various other points too numerous to mention, but which can be readily ascertained by comparing the tariffs.

STATEMENT SHOWING DIFFERENTIAL BETWEEN PORTLAND AND SPOKANE RATE BASIS AND FAVORABLE TO SPOKANE.

COMMODITY.	TO CHICAGO.						TO ST. LOUIS.					
	OLD RATE.			NEW RATE.			OLD RATE.			NEW RATE.		
	Port.	Spok.	Diff.	Port.	Spok.	Diff.	Port.	Spok.	Diff.	Port.	Spok.	Diff.
A. Shingles	60	60	.....	70	65	05	62.5	62.5	.....	70	65	05
B. Cedar Lumber	60	55	05	70	60	10	62.5	57.5	05	70	60	10
C. Pine Lumber	60	50	10	60	55	05	62.5	52.5	10	60	55	05
D. Fir, Hemlock, Larch, Spruce	50	50	.....	60	55	05	52.5	52.5	.....	60	55	05
E. Long Timbers	60	55	05	70	65	05	62.5	57.5	05	70	65	05
	TO ST. PAUL.						TO OMAHA.					
Commodity												
A. Shingles	50	50	.....	60	55	05	60	60	.....	65	60	05
B. Cedar Lumber	50	45	05	50	50	.....	60	50	10	65	55	10
C. Pine Lumber	50	40	10	50	45	05	55	45	10	55	50	05
D. Fir, Hemlock, Larch, Spruce	40	40	.....	50	45	05	50	45	05	55	50	05
E. Long Timbers	50	45	05	60	55	05	60	55	05	65	60	05
	TO KANSAS CITY.						TO DENVER.					
Commodity												
A. Shingles	60	60	.....	65	60	05	50	50	.....	60	55	05
B. Cedar Lumber	60	50	10	65	55	10	50	40	10	60	50	10
C. Pine Lumber	55	50	05	55	50	05	40	40	.....	50	45	05
D. Fir, Hemlock, Larch, Spruce	50	50	.....	55	50	05	40	40	.....	50	45	05
E. Long Timbers	60	55	05	65	60	05	50	45	05	60	55	05
	TO SALT LAKE CITY.											
Commodity												
A. Shingles	40	40	.....	50	50	.....	.....	.....	.....	.....	.....	.....
B. Cedar Lumber	40	40	.....	50	45	05	.....	.....	.....	.....	.....	.....
C. Pine Lumber	40	40	.....	40	40	.....	.....	.....	.....	.....	.....	.....
D. Fir, Hemlock, Larch, Spruce	40	40	.....	40	40	.....	.....	.....	.....	.....	.....	.....
E. Long Timbers	40	40	.....	50	50	.....	.....	.....	.....	.....	.....	.....

This is a statement showing the differentials existing between the rates in effect from Spokane and from Portland, to Chicago, St. Louis, St. Paul, Omaha, Kansas City, Denver and Salt Lake City, both on the old and new basis.

(Anderson exhibit 22 received in evidence, record page 73.)

ANDERSON EXHIBIT No. 22.

DIFFERENTIAL STATEMENT.

COAST VS. MONTANA–OREGON RATE.

Tariff S R 662 and 963 Comparisons.
I. C. C. No. 564 and I. C. C. No. 850.

Showing an increased differential in favor of Montana-Oregon basing points to various receiving points, the principal of which are as follows:

To Chicago, Mississippi River Common points, an increase of 7c. per 100 on shingles, cedar lumber and fir, hemlock, larch and spruce lumber.

To St. Louis Common points, an increase of 7½c. per 100 lbs. on shingles and 4½c. on Cedar lumber, and Fir, Hemlock, Larch and Spruce lumber, and 2½c. on long timbers.

To Omaha and Common points, an increase of 12c. per 100 lbs. on shingles, and 2c. on Cedar, Pine, Fir, Hemlock and Spruce lumber and 7c. on long timbers.

To Kansas City and Common points, an increase of 12c. per 100 lbs. on shingles, and 2c. on Cedar, Fir, Hemlock, Spruce and Larch lumber and 7c. on long timbers.

To Denver, Cheyenne and Common points, an increase of 10c. per 100 lbs. on shingles and 5c. on Pine, Fir, Hemlock, Spruce and Larch lumber.

To Salt Lake City and Common points, an increase of 5c. per 100 lbs. on Cedar lumber.

There is also an increase to various other points too numerous to mention, but which can be readily ascertained by comparing the tariffs.

STATEMENT SHOWING DIFFERENTIAL BETWEEN PORTLAND AND MONTANA-OREGON RATE BASIS

COMMODITY.	TO CHICAGO.						TO ST. LOUIS.					
	OLD RATE.			NEW RATE.			OLD RATE.			NEW RATE.		
	Port.	Mont.Ore.	Diff.	Port.	Mont.Ore.	Diff.	Port.	Mont.Ore.	Diff.	Port.	Mont.Ore.	Diff.
A. Shingles	60	60	.....	70	63	07	62.5	62.5	.....	70	62.5	7.5
B. Cedar Lumber	60	55	05	70	58	12	62.5	54.5	08	70	57.5	12.5
C. Pine Lumber	60	50	10	60	53	07	62.5	49.5	13	60	52.5	7.5
D. Fir, Hemlock, Larch, Spruce	50	50	.....	60	53	07	52.5	49.5	03	60	52.5	7.5
E. Long Timbers	60	55	05	70	63	07	62.5	57.5	05	70	62.5	7.5
	TO OMAHA, NEB.						TO KANSAS CITY, MO.					
Commodity												
A. Shingles	60	60	.....	65	53	12	60	60	.....	65	53	12
B. Cedar Lumber	60	45	15	65	48	17	60	45	15	65	48	17
C. Pine Lumber	55	40	15	55	43	12	55	40	15	55	43	12
D. Fir, Hemlock, Larch, Spruce	50	40	10	55	43	12	50	40	10	55	43	12
E. Long Timbers	60	55	05	65	53	12	60	55	05	65	53	12
	TO DENVER, COLO.						TO SALT LAKE CITY.					
Commodity												
A. Shingles	50	50	.....	60	50	10	40	30	10	50	40	10
B. Cedar Lumber	50	35	15	60	45	15	40	30	10	50	35	15
C. Pine Lumber	40	35	05	50	40	10	40	30	10	40	30	10
D. Fir, Hemlock, Larch, Spruce	40	35	05	50	40	10	40	30	10	40	30	10
E. Long Timbers	50	40	10	60	50	10	40	30	10	50	40	10

This is a statement of the differentials existing between Portland and the Montana-Oregon basis points to Chicago, St. Louis, Omaha, Kansas City, Denver and Salt Lake City, both on the old and new basis.

(Anderson exhibit 23 received in evidence, record page 73.)

ANDERSON EXHIBIT NO. 23.

Winnipeg—C. P. Ry.
vs.
Winnipeg—Gr. Nor. Ry.

COMPARATIVE STATEMENT.

Showing mileages and per cent rates in cents per 100 lbs. and per ton per mile on fir lumber from Vancouver, B. C., via C. P. Ry. and G. N. Ry. and Rossland, B. C., via G. N. Ry. to Winnepeg, Manitoba, as compared with rates Bellingham and Spokane to Winnipeg and Bellingham, to Mapes, North Dakota.

Basis of comparison is:

Canadian Pacific Lumber Tariff W. No. 592, Effective Nov. 1, 1905.

Great Northern Lumber Tariff G. N. W. R. C. No. 73—G. N. I. C. C. No. A-2667, Effective Nov. 1, 1907.

Great Northern Lumber Tariff G. N. Ry. C. R. C.-N. A. 77—G. N. I. C. C. No. 4-1982, Effective Aug. 28, 1906.

Great Northern Lumber Tariff G. G. G. F. O. No. 16993—G. N. I. C. C. No. A-1974, Effective Aug. 28, 1906.

TO WINNIPEG AND MAPES, N. D.

FROM	Dist. in miles	Rate in cts. per 100 lbs. per ton mile	FROM	Dist. in miles	Rate in cts. per 100 lbs. per ton mile	Di
Via Canadian Pac.			Via G. N., Bellingham,			
Vancouver, B. C...	1482	40	Washington,			
		.00541	to		50	10
			Mapes, N. D.....	1484	.00673	.00
Via G. N						
Rossland, B. C....	1445	34	Spokane, Washington, to		42	08
		.00471	Winnipeg, Manitoba....	1299	.00647	.00
Via G. N.			Bellingham			
Vancouver, B. C...	1728	40	to		50	10
		.00463	Winnipeg, Man.....	1669	.00599	.00

This is a statement showing a comparison of the fir lumber rate from Vancouver to Winnipeg via the Canadian Pacific and also via the Great Northern, and from Roslyn to Winnipeg by the Great Northern and Spokane to Winnipeg by the Great Northern and Bellingham to Mapes, North Dakota.

(Anderson Exhibit 24 received in evidence, record page 74.)

ANDERSON EXHIBIT NO. 24.

Rates on Lumber, Hops, Wool (Scoured), Canned Salmon and Green Hides, to Omaha, Neb., New York, N. Y., Boston, Mass., and Manistique, Mich., showing rate per cwt., minimum weight, mileage and per cent per ton per mile.

LUMBER. Portland to Omaha via Union Pacific. Average carload weight of 66,000 lbs., minimum marked capacity of car.

Mileage.	Min. Weight.	Rate	Per Car	Per cent per ton per mile.
1890	Capacity of Car	50	$330.00	.529

HOPS. Portland to New York, via Union Pacific to Omaha, Wabash to St. Louis, Penn. R. R. to New York.

	Mileage	Min. Weight	Rate	Per Car	Per cent. per ton per mile
	3363	15,000	$1.50	$225.00	.892
CANNED SALMON	3363	30,000	.75	$225.00	.446

WOOL. Portland to New York, via Union Pacific to Omaha, Wabash to St. Louis, Penn. R. R. to New York, to Boston.

Mileage	Min. Weight	Rate	Per Car	Per cent per ton per mile
3521	24,000	$1.50	$360.00	.852

GREEN HIDES. O. R. & N. Co. to Spokane, Great Northern to St. Paul, Minn., M. St. P. & S. S. M. Ry. to Manistique, Mich.

Mileage	Min. Weight	Rate	Per Car	Per cent per ton per mile
2307	30,000	.90	$270.00	.780

Although there are a large number of open equipments used for Lumber, a greater number of Box and Stock cars are used, the open cars will have a capacity of from 80M to 100M, the number of Box Cars will bring a fair average weight to 66,000 lbs.

Hops.....A Fair average weight would be 30M.
Canned Salmon.....A Fair average weight would be 40M.
Wool.....A Fair average weight would be 30M.
Green Hides.....A Fair average weight would be 40M.

The movement of Green Hides to Manistique, Mich., is very large, the minimum weight is 30M, but the equipment furnished will give a very fair average of 40M.

This is a comparative statement of lumber rates with those of hops, scoured wool, canned salmon and green hides from Pacific coast points to Omaha, New York City and Boston, showing the rates in cents per hundred, dollars per car, and in mills per ton per mile, also mileage.

(Anderson Exhibit 25 received in evidence, record page 74.)

ANDERSON EXHIBIT NO. 25.

ELEVATION OF

CANADIAN PACIFIC, GREAT NORTHERN, NORTHERN PACIFIC,

UNION PACIFIC.

CANADIAN PACIFIC	Feet.	
Selkirk Summit	4351	
Beaver Mouth	2435	*DE 1916 feet in 22 miles.
Stephen (Rocky Mt. Summit)	5321	*IN 2886 feet in 74 miles.
Medicine Hat	2171	*DE3150 feet in 302 miles.
Swift Current	2400	*IN 229 feet in 150 miles.
Winnipeg	700	
GREAT NORTHERN.		
Summit Cascades	3341	
Summit Montana (Rockies)	5199	
(Branch Line) Elk Park Mt	6225	
NORTHERN PACIFIC.		
Summit Cascades		
Welch, Montana (Rockies)	5705	
UNION PACIFIC.		
Summit Blue Mts	4204	
Sherman, Wyo. (Rockies)	8000	

*Note. DE Stands for decrease.
IN Stands for increase.

Number 25 is a statement showing the elevation of the Canadian Pacific, Great Northern, Northern Pacific and Union Pacific at the highest points.

The minimums back in 1893 were in the basis of practic-

ally 20,000 pounds, and they were increased to a basis of from 30,000 to 40,000 pounds, which has been in effect for a number of years. That is, generally speaking, it has been in effect for a number of years, until within about a year and a half ago, when they were put in on a cubical capacity basis, with a minimum as high as 60,000 pounds per car on a cubical capacity basis, which has had a tendency to act as a practical advance in the rate.

I have heard of the Trans-Continental Freight Bureau a number of times. My understanding is that it is a scheme through which the trans-continental roads act in the issuing of rates or the cancelling of rates, and they hold meetings from time to time in Chicago and vote upon and decide upon the cancellation or inauguration of a rate. The lines that are commonly termed the Hill and Harriman lines are the ones that have the say of the Bureau, as far as the northwest is concerned.

Cross-Examination.

In making comparisons, I have figured on the mileage basis from Portland, Hood River and Baker City. Hood River is east of Baker City on the O. R. & N., on a different rate basis; and Baker City is still further away and on still a different rate basis.

The shortest distance to which the rate is applicable on the Southern Pacific and O. R. & N. lines to Chicago is from a point about forty or fifty miles east of Portland, just east of Bridal Veil.

I took Portland; I did not go down to Eugene. I have got Harmansville in Wisconsin. It is just a short distance; I can point it out on the map very readily to you. Just about in this locality, right through here. (Indicating on map.) It is right here near Rhinelander. Here is Lake Superior over here. It does not touch the lake. I used the Soo Line tariff in making up that table. I understand there is lumber in Minnesota and Wisconsin that lies west of this Hermansville lumber. That is the only tariff I could get hold of from that district. The Hermansville rate is a rate that is spread over considerable of that territory. Most of the points in Northern Wisconsin take the same rate.

I took the longest possible distance because I wanted to get the longest mileage I could. In making up my Exhibit No. 18, a comparison from Louisiana and Florida to Denver, Omaha, Kansas City and Chicago, I again took the shortest distance

that I could find to which the rate was applicable. And then to Denver, Omaha and Kansas City, I showed points in Florida. Jacksonville, Florida, to Omaha, is about as extreme as Harmansville lumber to South Dakota, but I figured I say, in all of these, to try and get as great a mileage as I could to compare with our mileage. I did not take the shortest mileage, for each one of those statements contains the Baker City and the Hood River rates.

I endeavored to pick out on these southern points, localities from which there was a movement of lumber. That was my endeavor and in doing so I consulted the briefs in the Tift case. I was advised that there was an actual or substantial movement of lumber from Hermansville into South Dakota. I cannot say whether any lumber mover from Savannah, Georgia, to Omaha, from Jacksonville, Florida, to Kansas City, or Savannah, Georgia, to Kansas City. I could not say that it intimated in the Tift case that there was any such movement to Kansas City. It is my understanding that there was a movement from that locality. I could not say to what points.

Alexandria, Louisiana, is in the center of the yellow pine district of Louisiana, situated on the Port Arthur route, as I remember, or else the Texas Pacific. Donaldsonville, Louisiana, is another point in the center of the yellow pine district of Louisiana west of the Mississippi. I do not know whether there is any movement at all from those places, of lumber to Denver, Colorado.

In making up these statements I simply cast around the country to get an extremely long distance of lumber haul in order to compare it with our lumber haul from Portland, Hood River and Baker City to Chicago; and I endeavored to get in the center of the producing district.

The rate from the lumber producing points is a blanket rate from what is known as the coast basis points. That applies from Portland by the Oregon Short Line and the O. R. & N. It includes points of production not reached by the Harriman lines; it includes the Northern Pacific and the Astoria & Columbia River lines. It is a blanket rate that applies from points that are local to the O. R. & N. lines, and also from points that are local to the Northern Pacific lines.

The old rate of 50 cents to Omaha and Chicago both, extended from Ashland on the Southern Pacific through all the territory of the Southern Pacific up to Portland; virtually all; there are a few points that took a little arbitrary and do yet. Ashland is in the neighborhood of three hundred and fifty miles south of Portland. It extended down over the Astoria

& Columbia River Railroad west of Portland; it is figured a hundred miles to Astoria. It is my understanding that that was an independent line until recently. It extended over the Corvallis and the Eastern, and other independent lines; and likewise ran all the way up through that pink territory, shown on the map there, on the Northern Pacific line, up to the British Columbia line. As a result, under both the old rates and the new rates, they can ship at a common rate from all points on the west coast to any point within the Missouri river territory; and from all that territory the Chicago rates are common; from the British Columbia line to the Oregon-California line; over every little jerkwater road like the Bellingham Bay & British Columbia, the Corvallis & Eastern, and the Astoria & Columbia River, in conjunction with the big roads. There can be no shipment of lumber from points on the Northern Pacific north of the Columbia river to Portland and thence to eastern points on the O. R. & N.; there is no lumber movement whatever in that way. The only points are between Gobel and Portland.

There is a joint through route by Silver Bow on a higher basis. I do not mean to say that exactly the same rates do not prevail over the Northern Pacific and Great Northern to Chicago, and points east of the Missouri river via those lines, that prevail over the O. R. & N. lines. It is correct that the rates from British Columbia to the California state line over some routes are practically equal all the way around, to Kansas City and Omaha, and Chicago and all intermediate territory—Kansas and Nebraska points. To points west of Colorado points like Salt Lake City the rate is higher.

This pink section indicated on the map, indicates the coast basis. It is the territory over which there was a 40-cent rate, which is now 50 cents, by all routes; that is to say, the same rate by some route. I do not mean to say that in all that pink territory they make a 40-cent rate to St. Paul. There never has been a 40-cent rate to St. Paul from any of the Oregon territory except Portland proper, and a few points east of Portland over the lines of the O. R. & N. The 40-cent rate is applied to St. Paul from north of Portland on the Northern Pacific and over the O. R. & N. east of Portland out to about Bridal Veil and Hood River. South of that they never had any 40-cent rate to St. Paul. There never was a 40-cent rate from Portland to St. Paul that I know of over the Union Pacific. There has been a 40-cent rate right along on the O. R. & N. via Spokane in connection with the Great Northern; and from Bridal Veil and points east about as far as Hood

River, but it was finally extended to the Hood River district. That was over the Great Northern in connection with the O. R. & N. South of that they never had a forty-cent rate. In conjunction with the O. R. & N. the rate was 40 cents to St. Paul in connection with the Great Northern to Spokane.

The Columbia River is the dividing line by the Portland gateway. Taking all that territory in Western Washington which is penetrated by the Northern Pacific and the Great Northern, those coast rates apply via Spokane to all points on the O. R. & N. That is they apply via Spokane not only via the Northern Pacific and the Great Northern, but also via the O. R. & N.

A. C. DIXON:

I reside at Eugene, Oregon; I have been directly engaged in the lumber business for fourteen years and a little over. Have filled a number of positions around mills and lumber yards, including the management of one of the mills of the Booth-Kelly Lumber Company, and am now engaged as the sales manager for that company.

Am vice-president of the Lumber Association, and chairman of the Transportation Committee; also of the special committee in charge of this case.

I am familiar with the conditions in our section of the country from personal observation, and to a certain limited extent from personal observation in other sections of the state; and more particularly on account of my relationship to other lumber manufacturers, and meeting with them frequently and talking with them.

We have four mills in Lane County, about an average of 125 to 135 miles south of Portland, on the lines of the Southern Pacific, the Oregon & California lines in Oregon. That is about one-third of the distance from Portland to the southern line of Oregon. The capacity of the mills that I am interested in directly is 300,000 feet in ten hours. When we are running full capacity we use from 1,000 to 1,100 men in our employ, and in addition to that have a number of contractors getting out logs that use probably 200 to 400 additional.

Our output of lumber in 1906 was about 90 million feet; 3,900 cars. The number of carloads the first ten months in 1907 was 2,248, and about 47 million feet. All of our shipments originate on the lines of the Southern Pacific. We can ship south over that line into California, Nevada and

Mexico, and east over that line in connection with the O. R. & N. and O. S. L. and Union Pacific to common points on the Harriman lines only. Our shipments are all rail. We have no access to water. Substantially, after you leave the City of Portland a few miles, all of the mills in the Willamette Valley are practically all rail mills and are situated substantially the same as our mills are.

The lumber industry I should think by far is the principal single industry in the Willamette Valley. There may be as much money invested in agricultural pursuits and in farm lands, but no such number of men employed and no such payroll as in the lumber industry. The most accurate record we could compile in the association showed about 570 to 580 mills in Oregon. As I remember, about 61 mills are on the Astoria and Columbia River Railroad. The average daily capacity is 1,782,000 feet. Some of the mills located on that road have access to the water; those at Astoria for instance and those east of there. The bulk of them are rail shippers only.

There are about 15 or 16 mills at the City of Portland. Their output is about 1,595,000 feet a day. In the Willamette Valley, being the district indicated in red on the map, there are about 375 mills. The daily cutting capacity is 6,364,000 feet. All of those mills can only ship by rail over the Harriman lines and connections. From Portland to Baker City, there are 250 mills on the line of the O. R. & N., east of Portland, with a daily capacity of 1,606,000 feet, based on a ten-hour cut. They ship all rail only. There may be a very limited amount shipped down the river, but I do not think you could consider it an actual movement of lumber. I do not think there has been any lumber of consequence moved that way. It would be a very difficult movement. There are 26 mills on the coast with no rail connection, with a capacity of 1,505,000 feet a day. These do not include the mills touching the railroads. Those last mills can only ship coastwise or foreign.

There are 45 local mills that we have a record of with a daily capacity of 538,000 feet in Oregon that cannot ship either by rail or by water. The total capacity of all mills in Oregon is 13,391,000 feet. From that there should be subtracted 538,000 feet, leaving 12,850,000 feet approximately, as the capacity of the rail mills in the State of Oregon.

About thirty per cent. of all the cut, or 600,000,000 feet out of an annual cut of 2,000,000,000 feet of lumber manufactured in Oregon can only go by rail. The output in 1906 was

close to two billion feet and of that four hundred million feet was estimated water movement.

The local consumption and the amount held on hand over the first of the year was about one billion feet, and that left for rail shipment about six hundred million feet.

The output in 1907, as a general proposition, compared to the output in 1906, has very materially decreased in every instance that I am familiar with. The principal lumber produced in Oregon and Washington is what is known as Douglas fir, Oregon pine, and called by the government "red fir." From the examination I have made there are thirty-five to forty thousand men directly employed in the lumber industry in Oregon when the mills are operating. I should judge, approximately, the value of the investment in mill property and machinery in the State of Oregon was $50,000,000. I think that is a moderate rather than an excessive estimate, taken from the records of our Association as nearly as I can give it, and the reports that have been sent in.

The average annual payroll of those people on the basis of 40,000 men employed, would be about $500.00 to the man, between $450.00 and $500.00. Of course, that would not have been true three or four years ago, when wages were lower, very much lower than they are now, but about right for the past year, I think. I have our own payroll here, and the best way I could judge would be to average it from that. Our average on 1,050 men was about $56.00 per month a man. That would bring the total up to $670.00 per year per man at the present time. That was on an average of 1,050 men employed during one particular month. I think by far the largest number of men and the largest payrolls in the state are dependent upon the lumber business, and in a measure every industry in the state is connected rather closely with it; and in my opinion, upon the prosperity or failure of the lumber business depends the financial and commercial prosperity of the entire state, and of the Pacific Northwest. Close to our mills at this time are a number of towns, of several hundred people in each town, with school houses, hotels, small theatre buildings, banks, in some cases, and they are built up right around the sawmill industry, where, to my personal knowledge, less than ten years ago, there was no habitation of any consequence and no community. That is true all through the valley, and also further south in the state. The town of Grant's Pass, a town of 4,500 people, is built where members of our company formerly logged. They cut logs where now there are from

four thousand to five thousand people engaged in all classes of business, and contributing all classes of traffic to the railway company.

There are all sorts of industries there, a great many connected directly with the lumber business, from the manufacture of lumber to the manufacture in times past of pine needle mattresses, and in addition to that, the country has been opened up by prospectors coming out from the camps and mills. There is some mining business there, quite a good deal of fruit raising and hop raising, and all the varied industries that there are in any part of the state. I think that is true in our particular section. In the valley of the Mackenzie, the Mokawk and the Willamette there are prosperous farmers and well cultivated farms when within a decade or a little longer there was nothing but timber and no people.

The payroll of the men engaged in the lumber industry in the State of Oregon is in round numbers about $20,000,000 a year. The effect of the stopping of the industry on the balance of the state will be to practically stop every industry in the state, and all business of all kinds, to the same extent that the lumber business is stopped, because they are so closely connected.

Statement marked No. 7 is a record of tabulation of the weight of cars shipped by our company during two months of last year, April and October. We took as one month the month when lumber would be light, on account of having been stacked during the summer; and one month when it would be heavy on account of it being rained on during the winter; and the amount of average weight per thousand feet of our lumber shipped, sawed during that period, and what the advance means to us in dollars and cents per thousand feet, and sand feet, and what the total advance would have meant to us in our last year's shipments if it had been in effect during that time. The actual freight paid I have not totaled; it would be about $800,000 or $900,000 and the cost of the advance to us on the lumber shipped east would have been $81,995.34. That is, on shipments to the affected territory.

Since I have been in business there have been several increases in the minimums, beginning, as our records show, in 1902. The increase during that time amounts to, in the amount of lumber loaded now, over 1902, to about 7,000 feet on our eastern shipments, and is compiled from the records of our shipments to Chicago and common points which comprise the bulk of the eastern shipments. From the dry to the green lum-

ber, that is 14,000 to 25,000 pounds, and $70.00 to $120.00 per car.

The average loading of green lumber per car in 1902 was between 14,000 and 14,500 fet. Now it is from 21,000 to 21,500 feet. The difference in pounds is from 14,000 dry lumber—or say 10,000 as a minimum—to 25,000 pounds on a like amount of green lumber. I ship my lumber largely in the rough; the larger part of our output is shipped in the rough. On material going east probably at least half is surfaced. It is kiln dried. That would be the kind that I specified as being an advance of only $70.00 a car, light lumber.

The development of the industry from a shipping standpoint began early in the 90's or at least it had not amounted to anything of consequence prior to the early 90's. Along about the time the rates which were in effect prior to the November 1st rate were put in, say 1893, the mills began to build and the lumber industry to develop mainly in and around Portland. Following that the industry spread throughout the length and breadth of the state. As the rates were maintained in effect the demand became stronger from the east for lumber, and it was seen that eventually those in the treeless states would have to go to the Pacific coast for their supply. During this time the state itself has developed in all lines; the population has increased wonderfully in percentage, and the financial interests have increased. Our tax roll has doubled and tripled, and the number of people coming into the state annually from the east to seek employment and invest their money has doubled several times. When the lumber industry first began in Oregon the transportation service was very limited. One passenger train a day, for instance, was all we had over the Southern Pacific line each way. At the point I live, Eugene, there are now four trains a day each way. That illustrates very well the development along the transportation line.

The increased traffic over these same lines has been remarkable. I distinctly remember that from Portland to California at one time we only had three freight trains a week, one train every other day. Now we have several freight trains a day each way, and they are unable to carry the traffic offered them.

Table No. 9 shows the increased cost of labor and all the main articles of supply used in the production of lumber, the actual increase in cost as shown by the figures. We have been paying between 1904 and 1907 what is shown by this

table. These years correspond to the years mentioned by Mr. Hannaford in the letter referred to, showing the cost of lumber in those two years. I would just say, unless the Commission cares to see the different items, that the advance has been from 35 to 40 per cent. in all business at least, on both labor and supplies. I think it has been 50 per cent. increase on labor and a little less on supplies, bringing the average to about 40 per cent. increase, I think.

(Statement referred to introduced in evidence marked Dixon No. 1, Record, page 117.)

DIXON No. 1.

SHOWING THE INCREASE IN COST OF PRODUCTION OF LUMBER AS SHOWN BY THE RECORDS OF THE BOOTH-KELLY LUMBER CO.

(A) Labor:

	Common labor in mill	Edgermen	Planermen	Sawyers	Common labor in woods	Fallers	Buckers	Line men	Donkey Engineers
1904	$1.75	$2.25	$3.50	$4.50	$2.00	$2.50	$2.25	$2.25	$2.50
1907	2.25	2.75	4.00	5.00	2.50	3.00	2.75	2.75	3.00
Incr..	28½%	22%	14%	11%	25%	20%	22%	22%	20%

(B) Supplies:

	Leather Belting.	Rubber Belting.	Wire Cable.	9x10 Donkey Engine.	Logging Horses.	1-in. Black Pipe.
1904.....	28.5	48.6	45	$1850	$150	$2.50per100ft.
1907.....	36	54	58.5	2300	275	4.40per100ft.
Incr....	26⅔%	11%	30%	24%	80%	76%

The price of stumpage has increased very materially. In the last ten years, which is about as far back as my knowledge of stumpage values would go, the increase has been, in I might say two ways; an increase in the value of the per 1,000 feet, and an increase due to the method of estimating a given amount of timber on a given piece of land. A few years ago timber land was sold by the acre without much regard as to how many trees there were on the acre. A

little later the timber was estimated and sold at so much 1,000 feet and estimated in our section of the country, for instance, only those trees over 17 inches in diameter. The method of estimating has changed, until now we count everything down to and including 10 inches in diameter, which gives a larger number of thousand feet an acre, and in our locality the price of stumpage has increased from probably 20 cents a thousand feet to $1.00 a thousand feet as the market value.

There is hardly any comparison now in the state of Oregon as to the cost of location and the capital that is required to go into the lumber industry with the conditions that prevailed a few years ago, for the reason that when the industry was first started people were anxious to have you locate near them or near their town; you could get all the facilities you wanted for a reasonable price, and in some cases you could get a bonus and a donation of land to establish your factory. Owing to the development of the state that has all been changed; now, your ground costs you money and is expensive to start with; you have to buy your mill and the additional rights you want after you once get there are held at a very high figure, and the comparison between the investments would show it would take several times as much to go into the same sized enterprise now as ten years ago. Taxes have been decidedly on the raise. I cannot give you the exact figures as to taxes, but whereas timber land was formerly assessed at so much an acre, it has recently been cruised and a fairly accurate estimate made of the number of trees per acre, and so much per thousand trees charged as tax.

In the Willamette Valley I would say a larger number of mills own all or a portion of the timber they are operating in. I would say that the average mill, including those of all sizes, would either have to move or put in a railroad to get their logs to them, within ten years after beginning active operations. That would not be true of the very small mill located in a dense section of timber, but I think it would be true of the average mill in that section.

The hazard of the investment I think in a saw mill property out there is generally recognized to be very great, both in timber and saw mills. The insurance rate on saw mills shows the insurance people consider it a very hazardous thing. The depreciation on mill property depends largely on whether the mill is operating or lying idle. If the mill is idle the depreciation is very rapid indeed, and I would say would amount to 20 to 25 per cent. a year at least. It s a common statement among mill men that it costs about as much to

keep a mill idle as to keep it running. Of course, in that statement you would include the depreciation, but fire has to be kept in the boiler, and the fire pump has to be kept in operation if you want your insurance to continue; and if not, then sometimes you cannot get insurance, and the property has to be kept in some sort of a state of repair all the time.

The rates since we have been operating to Denver has been 40 cents; to Chicago 50 cents, and to Omaha 50 cents; to Kansas City the same. These rates have been continuously in effect about ten years. During that time we have increased our investments in the lumber business. We have increased every year probably without any exception, since that time, and our investment from a few thousand dollars invested in the mill plants has grown to between $500,000 and $600,000 at the present time mill plant and logging properties. At the present time we have two mills operating on half time and two mills shut down entirely.

Prior to this advance there has been considerable agitation and repeated informal requests and conferences relative to a lowering of the rate to Omaha and common points, Missouri points. This for two years: one a compartive reason and the other pertaining to the profits and sales in our business. The latter because we were unable to reach that territory in competition with yellow pine; the other because the people north of us had a lower rate than us to St. Paul, and we could not see why, with a 40 cent rate to St. Paul from Seattle, that mills in Portland and adjacent territory should not have a lower rate from points closer to the markets, and we do not see that yet.

The first rumor I heard of this proposed rate was in June of this year; the first definite information was in July. This rumor seemed to come from almost every lumber man that I met. I wanted to satsfy myself personally of the truth of the rumor as it was very important to our company, and so I went to the office of Mr. J. C. Stubbs in Chicago, who was General Traffic Manager of the Harriman lines, and I asked him whether our rates would be advanced and if so, how much. He said in reply that they would be advanced, but that he did not know what amount they would be advanced; the amount he had not then determined, but as soon as it was determined it would be officially announced, and that he would give us all the notice he could. I at that time explained to him the impossibility of our standing the advance, either paying it at the mill or charging it to the consumer, and I told him it was prohibitive and would ruin our business and close

our mills. His statement in response to that was that they would make an advance; he was very positive about that, and that if it did close our mills he was very sorry, but he could not help it; but he thought that I had overdrawn the picture of desolation and ruin, if you might call it such, to the lumber industries in my statements.

I told Mr. Stubbs in that conversation that we had previously offered to his traffic man in the northwest an opportunity to examine our books and ascertain our profits, if they proposed to make rates based on profits; and I then extended that offer to him and said that I would be more than pleased for him to send experts to us and ascertain our profits for any number of years he desired, and if it proved then that we had a profit equivalent to the amount of these rates I would have nothing further to say in regard to the raise in the rates. This offer has been made to several of the traffic officials and attorneys of the Harriman lines, and has never been accepted.

In July, 1907, Mr. Hannaford, the second vicepresident of the Northern Pacific Railway Company, issued a letter to the secretary of the Lumber Manufacturing Joint Committee of Seattle, Washington, announcing this proposed advance in rates officially as I understood it, and I have seen what purported to be a copy of that letter.

(Letter offered in evidence, marked "Defendant's Exhibit No. 2," record, page 127.)

DIXON NO. 2.

Northern Pacific Railway Company.
Office of the Second Vice-President.
St. Paul, Minn.

July 28, 1907.

J. M. Hannaford, Second Vice-President.
A. F. Specht, Secretary Lumber Manufacturers' Joint Committee, Seattle, Washington.

Dear Sir: Mr. Howard Elliott, president of this company, being in the east, his secretary has referred me to your letter of July 8th, in the matter of proposed advance in lumber rates from transcontinental points.

I have delayed answer in your communication, hoping that I might be able to send your copy of the proposed tariff with my letter, but the printers have been somewhat delayed, and I understand it will be a few days yet before the tariffs will be

ready for distribution; and said tariffs will not be effective until October 1; this more than two months' notice being given to enable manufacturers to clear up as far as possible their old orders before the new rates become effective. The basis upon which these changes to various territories are made is as follows:

Fir Lumber.

	Old Rate.	New Rate.
Pacific Coast to		
St. Paul	40c	50c
Chicago	50c	60c
Missouri River	50c	55c
St. Louis	52.5c	60c
Denver	40c	50c
Mississippi River points	50c	60c

The lumber men engaged in these rail eastern shipments will understand fully the conditions that resulted in the present rate basis, which was established in 1893, and that those conditions have long since passed. At that time, the output of white pine in Minnesota, Wisconsin and Michigan was at its height; and Pacific Coast lumber could not be laid down and sold in the eastern markets in competition with the home product and pay a higher freight rate.

Since then the forests of Minnesota, Wisconsin and Michigan white pine have practically been marketed. The prices have almost doubled; the Pacific Coast lumbermen have no trouble to compete except the trouble of getting their products to the eastern market.

In 1893 the preponderance of traffic on the transcontinental roads was west-bound; a large percentage of the cars used in handling this west-bound merchandise were brought back empty. A strong consideration for making the low rates on lumber was to save drawing these cars east-bound empty—nearly 2,000 miles haul.

In the meantime, the changed conditions have enabled the lumbermen to advance the prices on fir on an average of more than 50 per cent. Some of the products that we use and are purchasing in the west have been advanced more than this, for example:

	1904.	1907	Inc.
Fir ties	$ 7.00	$13.00	83%
Fir car sills	12.00	20.00	57%
Fir car framing	11.00	21.00	91%
Fir lumber (10x12x20)	10.50	19.00	61%
Fir bridge stringers	11.50	17.00	48%

It is our desire to assist in every way possible the development or at least the maintenance of the lumber interests on the Pacific Coast; but it is absolutely impossible, in view of the great increase in the cost of our operation, and the change in the direction of the large tonnage, for us to furnish any empty cars for this traffic that are not handled west under load and unload on the Pacific Coast. We believe with the proposed advance that we can handle empties west, at least up to our ability to handle loads east-bound on our line. You know very well the large amounts of money that are being spent by the northern lines in the construction of the Portland & Seattle and the double tracking of the hundreds of miles of the Northern Pacific, enable us to take better care of the east-bound tonnage that is offered.

Very truly yours,

(Signed) J. M. HANNAFORD.

Our company is a subscriber to The American Lumberman. I remember the article appearing in the issue of March 16th, 1907, regarding the rumored advance in lumber rates. That was the first rumor I heard of.

I would like to state that after this article appeared in the Lumberman, there was nothing further said for some time and to my mind the thing had dropped, and I had no further thought regarding the advance until, as I said a while ago, some time in June. I did not mean to say in my testimony given awhile ago that I had not thought of such a thing as an advance, but the rumor did not become strong enough for me to pay any attention to it until some time in June.

The effect of the rumor was to immediately make everybody cautious, including the mill men, and the buyers more particularly. When the rumor became stronger the buyers, in order to protect themselves, immediately began to impose conditions on the mill men; in other words, they tried to make them guarantee the rates. And, before the rates went into effect buying had practically stopped entirely unless the rates would be guaranteed; and since the rates were in effect there have been no orders of any kind or character from the affected territory offered to us, with the exception of probably two or three carloads. There have been none that we have tried to get that we have been able to get, so it has practically stopped our business in its entirety.

From the correspondence I have had with the mills and from being at a number of them personally and talking with the owners and representatives all over the northwest, I

should say that all the mills are in the condition that our mills are in; that is, unable to secure orders or unable to operate, with the exception of those that are running on contracts for railroad material, contracts executed prior to the advance in rates.

During the year 1906 we were better fixed for cars than this year, but still short of equipment during the year. When I left home ten days ago, or a little less, we were being offered cars by the car service agent of the Harriman lines in Portland, all the cars we wanted; in fact he was asking us if we could use cars, and said that he had several hundred cars idle, and no particular use for them, and I have had this verified from a large number of sources. There are more cars out there than can be used; in fact there is no demand for them for eastern shipments.

The financial flurry affected Oregon, certainly, in every line of business, but we were brought to a standstill practically before we ever thought of any financial trouble. At the time the trouble came to us it was by the New York banks refusing to cash the exchange. It was like a cloudburst out of a clear sky, so to speak; it was a great surprise to everybody in our section of the state.

The mills began to close down at the period I first spoke of. That is, when the buyers began to withhold and refused to buy until they knew what was going to be done in regard to the rates. This applied not only to buyers of lumber for retail yards, but to the railroad concerns, who in some instances withheld their orders until they could determine what was going to occur, and in other instances stated that they would not buy until after the advance went into effect and then they expected to be able to buy lumber at the mills much cheaper.

When I refer to the railroads, I refer to the purchasing agents for the railroad. That is where we get our business, and they stated that they expected to buy cheaper after the advance than before.

There was a rate raised down in the Salt Lake territory to our section at the same time the other advance was made; there was an advance of 5 cents to Salt Lake and practically that to all common points in Utah. That advance was in existence for 30 days, and then it was withdrawn. Throughout that 30 days we did not have an order, or ship a car into that territory, where previously we had shipped a number of cars a week, or several hundred cars a year.

After seeing Mr. Stubbs, the committee in charge of this

rate matter requested our secretary to write Mr. E. H. Harriman, then on the coast, or due to arrive there shortly, and request a conference with him. That request was made and the conference was granted, and a portion of the committee met with Mr. Harriman in Portland. I had several conversations with the officials of the company in connection with the Salt Lake rate, one in particular with Mr. Miller, the general traffic agent of the Harriman lines in the northwest, with offices in Portland. Mr. Miller told me that he knew nothing of how the rate happened to get in there and that he was surprised to see it in there. He said that he understood that it was an error in the compilation of rates, and he told me quite plainly that they would have it corrected, or that he would endeavor to have it corrected; and at one time he seemed to think he could have it corrected in a very short time. But, during that same day he told me that they would be unable to correct it prior to December 1st; that is, they would be unable to correct it without giving the usual 30 days' notice of the correction, and that is what did occur. That is, they agreed to cut that out after 30 days' notice, and I understand that they did cut it out.

Some of the railroads east have always solicited freight that we shipped; those east of Chicago are still soliciting it; those east of Omaha are still soliciting the business. There was a time when freight solicitors visited us quite frequently to get the routing of our material, either by the O. R. & N. via Portland or Sacramento and east on the Southern and Union Pacific. For the last four or five years there have been no solicitors asking for our freight from the Harriman lines, but we have been instructed how to route it, and the bulk of it has gone via Portland. The solicitation only begins beyond the eastern terminus of the Harriman lines. But, before the Harriman interests controlled all the western roads there was solicitation south, over the Southern, east and north over the Northern California, and east.

The basis of figuring sales and profits, to my knowledge, was always on the rates then in force, with a thought and a stated thought and probability that there would be a decrease as the bulk of the traffic increased. There never was a thought, and I never heard the question of an increase in rates discussed prior to the present year. As I said about the solicitation, the railroad solicited traffic repeatedly and helped us, or offered to help us in any way they could to develop eastern markets, going so far as to furnish our repre-

sentative transportation, I believe, in some instances, to go out and solicit business; and telling us that they wanted the business and were in accord with us in developing the market, and would do anything they could to assist us in pushing Oregon fir further east.

The Denver market carries a 40 cent rate. We shipped quite a good deal of lumber into Denver and to Denver common points, as against a 34 cent yellow pine rate from yellow pine districts west of the Mississippi River.

I know the rate that yellow pine gets in there on, but not the exact points of origin. In that territory, which is about as close as we get to a parity with the yellow pine rates, those people have some advantage on everything we ship there, and we consequently get a lesser amount at the mill for each grade of lumber than do the yellow pine mills. I have a statement here which has been prepared giving those figures. It is my impression that the market competition at Denver and in that territory comes from the southern fields of lumber supply, west of the Mississippi river. It is yellow pine, at least, and my impression is that it comes largely from west of the river. At Salt Lake and that territory we meet some yellow pine competition but not so great as in Denver. The competition is more largely among Pacific coast mills, and some local timber there, not a great deal; but some from New Mexico and Arizona, which is a low grade of lumber. For Kansas City, Omaha and other Missouri river points, the competition is more keen as against the fir mill, the yellow pine rate being lower and the fir rate being higher, making the difference between the two rates greater; and the consequence is that the net amount received by the yellow pine manufacturer for each grade manufactured is much greater than that received by the Pacific coast mill.

Our rate to the Missouri river was 50 cents and it was raised to 55 cents. From the southern pine forests I think it was 23 cents. Just briefly, to give you on some representative shipments of lumber, the net amounts received: At Omaha and Kansas City common points, for No. 1 vertical grained flooring, which is about the best article we manufacture, the yellow pine mills, after deducting their freight on a basis of 23 cents, received net for that flooring $29.25, at the time this tabulation was made up, some two weeks ago; as against $23.75 received by the Pacific coast shipper to the same point, on the same comodity. That was on No. 1 grain flooring, vertical grained flooring. On flat grain flooring, a

cheaper commodity, on the same rate, from the same place, $22.25 against $16.75 at the Pacific coast mill. 2 by 4 scantling 16 feet long, which is a common size to figure on with common, ordinary lumber, would have netted the yellow pine manufacturer $12.75 as against about $6.00 net to the Pacific coast shipper. The rate from the yellow pine region was 23 cents as against 50 cents from the Pacific coast.

We have sold scantling in Kansas City, but not at the time this list was made up, because the price had gone down below the cost of manufacture; but if we had met the competition on that day, two weeks ago, that is the price we would have gotten.

We have the same rate on all grades of fir lumber. There is a difference between the pine rate and the fir rate, though, and a difference between the cedar and the fir. We had to meet at the Missouri river generally speaking a 23-cent rate as against our 50-cent rate. That is one reason why we have been trying to get that 40-cent rate. We have met it and sold in the market. The relative prices in Kansas City would have to be just about the same in order to do business. Our lumber is the same as the other in quality and we get just as much, within 50 cents one way or the other.

We have paid 40 cents to Denver and they (the southern mills) paid a rate of 34 cents to Denver, and we have paid a rate of 50 cents to the Missouri river and they (the southern mills) paid a rate of 23 cents or 24 cents. There is a difference of 20 cents in their favor. We could expect to compete on that lumber, both at Denver and Kansas City, but not in the same degree. We have been able to find scarcely any profit on that lumber but we compete to a limited degree at Kansas City. We make very little profit at Kansas City and none at the prices in effect at this time. I would expect the rates to be so adjusted that we could compete on that lumber with yellow pine, both at Denver and Kansas City. None of these items are rough lumber; they are surfaced lumber. We have shipped lighter grades of lumber, which the freight does not affect so much, to a further point east, and consequently the yellow pine manufacturer has been able to tell about what it would cost us to get our material there and has possibly fixed his prices accordingly, and we do not ship much stuff in there.

The cost of transporting yellow pine lumber and fir lumber is not fairly represented by the rates between the two, the yellow pine is slightly heavier on each item than the fir;

there are some items where they are about the same but on rough lumber it is very much heavier. Rough yellow pine is heavier than fir; I think on an average about 700 pounds a thousand feet; seven hundred or eight hundred pounds. That helps to equalize the difference in rates between the fir lumber and the yellow pine. It is not a fair statement to say that at the same rate the fir is given the preference over the yellow pine for the reason that there is no rough fir lumber shipped into that country that I ever knew of. There is not to my knowledge any rough lumber shipped in.

The fir lumber runs lighter than pine, until it is machined and kiln dried, by taking out the pitch and sap from the yellow pine, when it is practically the same weight. That heavier character of the southern pine would increase the disparity that I refer to if they shipped rough lumber, which they do not.

So far as the question of the relative weights of lumber is concerned, considering the weight alone, possibly on the average we have a slight advantage. I would say that the only grades of lumber that are shipped in there now would be the upper grades, one and two, clear; and that on those grades there would be a net price to the yellow pine mills of from two to six dollars better than our mills. In the Missouri river in the past we have largely sold what we call select lumber and better. That is the different grades of clear lumber only. In Denver we have sold both clear and common lumber, all, however, machined or worked, so it would reduce the weight, and no rough, green lumber in either market. The price at which our lumber sells is the same that yellow pine lumber sells for the same purpose; they are competitive woods, and bring about the same price.

Our rate to Chicago is 50 cents, and we are met in competition there, I think, by the yellow pine in practically every kind of lumber we ship there. I think the yellow pine rate to Chicago is 33 cents. I am not positive as to that, however. I think it is 33 cents or 30 cents. There is such a difference that we cannot ship anything of consequence in there that they can get in the south, or anything but the upper grades of material, or materials where fir is better adapted for the work than yellow pine.

The first ten months of this year, 50 per cent of our material passed from Portland over the O. R. & N. east. Last year it was 43 per cent. I can say in a general way that the

statement showing the markets to which we shipped during the last year covers the Denver market and the Missouri river market and Chicago and common points markets, and Pittsburg and common points. That is the bulk of it. Some at St. Louis and Mississippi river points. We do not manufacture doors and sash. Our output is all shipped as lumber and lath. I have a statement here showing the disposition of the output of our mills for each year since 1901 up to November 1st of this year. We were not running back in 1893. This statement is divided; Oregon and Washington; Idaho and Utah; Colorado; Kansas and Nebraska; East of the Missouri river; East of the Missouri river to railroads; and through railroad material; in feet. This statement shows the amount of last year's shipments which went to points covered by this tariff.

(Dixon Exhibit No. 3, received in evidence, record page 154.)

DIXON No. 3.

THE BOOTH-KELLY LUMBER COMPANY.

Year.	(a) Total Shipments.	(b) Ocean Shipments. Port.	(c) Or. and Wash.	(d) Idaho and Utah.	(e) Colorado.	(f) Kan. and Nebraska.	(g) East of Mo. R.	(h) East of Mo. R. R. R. Mat.	(i) R.R.Mat.
1907	47,480,727	None	1,337,608	4,214,084	4,060,327	2,017,602	11,537,771	3,788,169	16,018,627
1906	79,193,813	None	2,656,528	3,782,916	3,416,022	1,881,213	21,133,853	4,892,766	19,422,401
1905	69,070,399	None	5,156,416	3,354,942	3,889,676	2,052,883	11,770,067	3,788,139	24,815,308
1904	59,528,145	None	10,381,101	885,646	1,135,969	2,215,499	6,159,390	1,705,441	23,528,153
1903	51,783,144	None	7,010,967	2,116,444	888,928	3,117,233	6,390,653	3,441,436	20,574,501
1902	65,213,898	None	8,496,425	3,235,465	3,748,499	6,237,044	6,721,134	3,231,999	16,880,527
1901	55,474,033	None	11,526,868	553,310	4,330,871	211,150	174,798	None	12,329,818

Fifty per cent of our lumber which goes south, part of it is consumed in California and Nevada; part locally in Oregon, for the use of railroad companies, and shipped to local yards in Oregon; and part locally in the near vicinity of our mills. The report will show what part is shipped out of the State of Oregon.

(Dixon Exhibit No. 4, offered in evidence, Record page 154.)

DIXON No. 4.

SHOWING COST OF PRODUCTION OF LUMBER AND NET PROFIT ON SAME AS SHOWN BY THE RECORDS OF THE BOOTH-KELLY LUMBER CO.:

	1906	1905
Logging	$ 4.58	$ 4.25
Sawing	1.67	1.30
Planing and handling	2.56	1.76
Other expenses	.13	.13
Total	$ 8.94	$ 7.44
Selling price	$13.78	$ 9.71
Gross profit	4.84	2.27
General office expenses	.44	.45
Taxes	.17	.16
Insurance	.15	.10
Interest and discount	.70	.85
Deterioration	.40	.41
Other expenses	.17	.02
Total	$ 2.03	$ 1.99
Net profit	2.81	.28

This statement now handed me shows the cost of production of lumber at our mills for the years 1905 and 1906. This is as far as our records extend. That is, we have not the records for this year. Our average cost for the year 1906, for every thousand feet of lumber manufactured, was $8.94. That includes stumpage at 50 cents a thousand feet. That $8.94 will need a slight explanation however; that is labor, cost of logs, and does not include such expenses as taxes, insurance, interest on obligations, and incidental expenses. It does not include depreciation on our plant. The selling price, as against that $8.94 in 1906, was $13.78 average for each 1000 feet of lumber sold, leaving the gross profit $4.84 per

thousand feet. That includes all characters of lumber that we make.

The gross profits were $4.84, from which was deducted, to get the net profit, the general office expenses, 44 cents per 1000 feet. That includes superintendence and maintenance and general salaries; taxes 17 cents per 1000 feet; insurance 15 cents per 1000 feet; discount and interest on our obligations, 70 cents per 1000 feet; deterioration, 40 cents per 1000 feet; incidental expenses of all kinds, 17 cents per 1000 feet; leaving $2.03 to be taken from the gross profits, $4.84; leaving the net profit of $2.81 per 1000 feet, for the year 1906. I have the same statement for 1905, made in the same way, showing a net profit of 25 cents per 1000 feet for the year 1905.

The value of our plant is $570,841. We incurred a charge of 70 cents on account of interest and discounts. That includes nothing in the way of a dividend or interest paid to ourselves, but includes anything of an obligation. We do not owe for our whole plant; we own our plant, and this is money we are using in all the branches of the business, so it does not include any interest on the cost or value of our plant.

The discounts that I referred to are quite an item, amounting to 2 per cent on all bills we sell and get cash for. Our net profit in 1906 by those figures was $2.81 per 1000 feet. For 1905 it was 28 cents per 1000 feet. These figures are absolute, actual figures of the amount of money expended in producing this amount of lumber and shipping it, the money paid out for labor, sawing logs, planing the same and loading them on the cars and marketing the lumber, and paying interest on our obligations, and paying our taxes. That represents our cost and our net returns.

The advance in price was occasioned primarily, or begun, at the time of the San Francisco fire and earthquake. It was caused by the extraordinary demand for materials for several months during the year 1906; and further caused by the fact that none of the mills could secure cars sufficient to move their output; and realizing that condition, they took, as was offered them, and asked where they could get it, a fair price, you might say a good price, for what material they did ship. The figures are descriptive in this respect; and, while we made $2.81 a thousand on that we shipped, we did

not make that on what we cut, because we had a large portion of what we cut left over. We had left last year about 25,000,000 feet at the beginning of the year, the value of which at this time is problematical only, and if any loss is occasioned from this lumber, and a considerable loss has already been occasioned,—it will wipe out a good share of this $2.81 that we made last year. In other words, we have probably lost now not less than one-half of all the money we thought we made last year by depreciation in the stock on hand left over, both as to grade and as to price.

There is no question in connection with the San Francisco disaster, but that the conditions at that time were not a normal condition at all. We were asked to ship lumber to our customers and to fix the price later; they said to ship it along and that they were willing to pay any price that was fair, so that they could get the lumber. The condition today is that there is very little demand. The price is lower than it was or as low as it was three years ago. It is very hard indeed to fix the base price or any market value on our material at this time, but I think $9.00 per 1000 feet—$8.50 to $9.00 per 1000 feet, would be probably fair covering what sales are now made; but if any great quantity of lumber was put on the market at this time it would not bring any price worthy of consideration, it would not bring a price above its cost, in other words. This break in prices occurred before there was any financial trouble, before the financial storm broke. It was impossible for us to secure orders at any reasonable prices, even before the financial trouble came on, as I explained before.

I showed you our profits for last year. They were $2.81 per 1000; and for the year before they were 28 cents per 1000 feet, part of which has been wiped out by losses since then. As against that the advance amounts to $2.795, as we find the average. Since we cannot take the greater from the less it is manifestly impossible for us to absorb that extra freight charge. There is absolutely no way in my opinion, for this to be imposed upon the consumer in these competitive markets, for the reason that our plant is now on a parity with his in the markets, and any advance of 50 cents or $1.00 a thousand feet would result in our losing all the business that we bid on. I might say that the effect of the

advance in freight, while only added to eastern shipments, only affecting them directly in that way, does indirectly and very quicky affect all our output in the same proportion.

(Dixon Exhibit No. 5, offered in evidence, Record page 163.)

DE

SHOWING THE PERCENTAGE OF CAPACITY U
MILL WITH FREIGHT CHARGE
BOOTH-KELL

TA

	Car No.	Shipped.	Consignee.	Destination.	Ca
Denver Territory:					
O. S. L.	25586	6– 4–07	Atkinson Bros.	Ft. Russell, Wyo.	10
U. P.	81531	6– 5 07	Bartlett L. Co.	Greeley, Colo.	8
N. Y. C. & St. L.	385640	6– 7–07	Atkinson Bros.	Ft. Russell, Wyo.	8
Mo. P.	29504	8– 8–07	Grt. West. S. Co.	Eaton, Colo.	8
L. S. & M. S.	41494	3–12–07	Colo. F. & I. Co.	Coal Creek, Colo.	6
M. & O.	17979	3–25–07	Atkinson Bros.	Ft. Russell, Wyo.	6
C. B. & Q.	32547	4–26–07	United Oil Co.	Florence, Colo.	6
C. G. W.	15312	5–22–07	E. G. Steele.	Eaton, Colo.	6
P. R. R.	28426	5–30–07	Tab. Pierce L. Co.	Denver, Colo.	10
P. R.	281190	8–14–07	Bartlett L. Co.	Greeley, Colo.	10
Omaha Territory:					
U. P.	68234	10–31–07	Leidigh & H. L. Co.	Bennington, Kan.	6
N. Y. C. & H. R.	25730	11– 2–07	Leidigh & H. L. Co.	Bennington, Kan.	8
C. & N. W.	81842	8–10–06	Leidigh & H. L. Co.	Ellis, Kan.	8
P. R. R.	64223	8–13–06	Leidigh & H. L. Co.	Ellis, Kan.	6
B.& O.	94918	8–13–06	Leidigh & H. L. Co.	Ellis, Kan.	6
Chicago Territory:					
C. & A.	16150	1–24–07	The Pullman Co.	Pullman, Ill.	7
S. P.	57465	1–26–07	The Pullman Co.	Pullman, Ill.	6
G. T.	10690	1– 9–07	Amer. C. & F. Co.	Chicago, Ill.	8
C. & O.	15065	2–15–07	Armour Car, L.	Chicago, Ill.	8
L. & W.	3908	4– 9–07	Amer. C. & F. Co.	Chicago, Ill.	8
U. P.	50063	8–10–07	Armour C. L.	Chicago, Ill.	8
I. C.	28388	9–10–07	Armour C. L.	Chicago, Ill.	6
C. R. I. & P.	56757	6– 8–07	Hettler L. Co.	Chicago, Ill.	8
O. S. R. R.	6259	7–11–07	Hettler L. Co.	Chicaog, Ill.	6
C. M. & St. P.	61619	9–13–07	Hettler L. Co.	Chicago, Ill.	10
Pittsburg Territory:					
C. M. & St. P.	80782	2–19–07	Gillespie & Co.	McKees Rocks, Pa.	8
P. M.	32010	6–10–07	Gillespie & Co.	McKees Rocks, Pa.	6
T. & N. O.	31000	3–23–07	P. S. Car Co.	McKees Rocks, Pa.	10
P. R. R.	94678	3–28–07	S. S. Car Co.	Butler, Pa.	8
P. R. R.	95076	4–19–07	S. S. Car Co.	Butler, Pa.	10
C. & N. E.	8572	4–22–07	P. S. Car Co.	McKees Rocks, Pa.	8
C. & A.	27841	5– 7–07	P. S. Car Co.	McKees Rocks, Pa.	8
C. P. & St. L.	4161	5–27–07	P. S. Car Co.	McKees Rocks, Pa.	8
C. R. I. & P.	61931	6– 7–07	P. S. Car Co.	McKees Rocks, Pa.	8
Totals and average per cent of capacity used			**2,435,000**	**2,122,380**	**.8716**

DIXON No. 5.

ING THE PERCENTAGE OF CAPACITY USED, EARNINGS PER CAR AN
MILL WITH FREIGHT CHARGES ON EASTERN SHIPMENTS M
BOOTH-KELLY LUMBER COMPANY.

TABLE No. 2.

nsignee.	Destination.	Capac-ity.	Wght.	Per ct. of cap.
son Bros....	Ft. Russell, Wyo..	100,000	89,800	.898
tt L. Co....	Greeley, Colo.....	80,000	65,400	.818
son Bros.....	Ft. Russell, Wyo...	80,000	72,100	.901
Vest. S. Co...	Eaton, Colo.....	80,000	63,320	.791
F. & I. Co...	Coal Creek, Colo...	60,000	65,600	1.093
son Bros.....	Ft. Russell, Wyo..	60,000	68,940	1.149
l Oil Co.....	Florence, Colo.....	60,000	59,100	.985
Steele.....	Eaton, Colo.....	60,000	64,220	1.07
Pierce L. Co..	Denver, Colo.....	100,000	60,000	.60
tt L. Co.....	Greeley, Colo.....	100,000	66,900	.669
n & H. L. Co.	Bennington, Kan..	60,000	39,300	.655
n & H. L. Co.	Bennington, Kan..	80,000	42,600	.532
n & H. L. Co.	Ellis, Kan.....	80,000	48,660	.608
n & H. L. Co.	Ellis, Kan.....	60,000	41,780	.696
n & H. L. Co.	Ellis, Kan.....	50,000	35,000	.70
llman Co...	Pullman, Ill.....	70,000	67,300	.961
llman Co...	Pullman, Ill.....	60,000	61,000	1.017
C. & F. Co..	Chicago, Ill.....	50,000	52,900	1.06
r Car, L....	Chicago, Ill.....	85,000	79,700	.937
C. & F. Co..	Chicago, Ill.....	50,000	55,600	1.112
r C. L.....	Chicago, Ill.....	50,000	54,400	1.088
r C. L.....	Chicago, Ill.....	60,000	61,000	1.016
L. Co.....	Chicago, Ill.....	80,000	81,300	1.016
L. Co.....	Chicaog, Ill.....	60,000	60,000	1.00
L. Co.....	Chicago, Ill.....	100,000	90,720	.907
e & Co.....	McKees Rocks, Pa.	80,000	73,000	.912
e & Co.....	McKees Rocks, Pa.	60,000	54,000	.90
r Co.....	McKees Rocks, Pa.	100,000	85,400	.854
r Co.....	Butler, Pa.....	80,000	61,800	.772
r Co.....	Butler, Pa.....	100,000	63,740	.637
r Co.....	McKees Rocks, Pa.	60,000	60,000	1.00
r Co.....	McKees Rocks, Pa.	60,000	64,000	1.066
r Co.....	McKees Rocks, Pa.	60,000	50,640	.844
r Co.....	McKees Rocks, Pa.	60,000	63,180	1.053
		2,435,000	2,122,380	.8716

AND COMPARISON OF COST AT
TS MADE BY THE

Rate.	Earn. of car.	Cost at mill.	Difference.	Kind of Lumber.
$0.40	$359.20	$418.05	$ 58.85	Common Ro.
.40	261.60	395.87	134.27	Com. Ro. and Wkd.
.40	288.40	333.45	45.05	Common Ro.
.40	253.28	296.42	43.14	Common Ro.
.40	262.40	315.13	52.73	Common Ro.
.40	275.76	314.03	38.27	Common Wkd.
.40	236.40	281.35	44.95	Common Ro.
.40	256.88	245.43	11.45	Common Ro.
.40	240.00	453.06	213.06	No. 1 Common Wkd.
.40	267.60	462.09	194.49	No. 1 Common Wkd.
.50	196.50	203.01	6.51	Lath.
.50	213.00	247.00	34.00	Lath.
.50	243.30	257.64	14.34	Lath.
.50	208.90	223.27	14.37	Lath.
.50	175.00	182.19	7.19	Lath.
.50	336.50	340.85	4.35	No. 1 Common Ro.
.50	305.00	469.94	164.94	No. 1 Common Wkd.
.50	264.50	793.03	528.53	Select Wkd.
.50	398.50	826.78	428.28	Select Wkd.
.50	278.00	389.82	111.82	Select Wkd.
.50	272.00	590.76	318.76	Select Wkd.
.50	305.00	663.70	358.70	Select Wkd.
.50	406.00	506.84	100.84	Select Ro.
.50	300.00	398.02	98.02	Select Ro.
.50	453.60	581.75	128.15	Select Ro.
.625	456.25	345.95	110.30	No. 1 Common Ro.
.625	351.00	274.80	76.20	No. 1 Common Ro.
.625	534.05	644.29	110.24	Select Wkd.
.625	386.25	553.93	167.68	Select Wkd.
.625	398.38	546.62	148.24	Select Wkd.
.625	375.00	549.16	174.16	Select Wkd.
.6375	408.00	541.28	133.28	Select Wkd.
.6375	322.83	459.71	136.88	No. 1 Clear Wkd.
.6375	402.78	688.84	286.06	No. 1 Clear Wkd.

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This is a statement showing the percentage of capacity used in those cars that we shipped in. Earnings per car; comparison of cost at mill with freight charges on eastern shipments. It is made up of forty cars, taken at random, to the Denver territory, Omaha territory, Chicago territory and Pittsburg territory. The total capacity of the cars taken, as compared with the total weight of the cars shipped, shows that 87 and a fraction per cent. of the capacity was used. This statement also shows the earnings of each car, the cost at the mill of the lumber on the car, the difference, whichever way it was, and the kind of lumber on the car.

We think the lumber traffic is different from most other commodities, in that the shipper carries the burden of placing the load in the car and taking it off, and providing the equipment, the equipment necessary to hold it on the car while in transit, and also paying freight on that equipment. This is done in every case, as far as I know, by lumber shippers, and is done at an expense of from $3.00 to $5.00 a car to the shipper of lumber, direct cost, in addition to the freight on that weight of equipment. I have no statistics relative to the proportion of our lumber shipped in open cars and in box cars, but I should say from 40 to 50 per cent in open cars; not less than that. We are allowed 500 pounds for each open car. That has been allowed us recently and does not hardly cover the weight. That does not cover all our shipments—for not over one year.

The demurrage rule affects all cars alike. We are supposed to load a car with 33,000 feet of lumber in the same time that we take to load a car with 10,000 feet of lumber. So far we have had to insist upon our customers giving us orders that will fit any kind of a car, or if they could not do that, give us permission to fill the balance of the car with what we choose or with what they might suggest. It is very often the case, in a case like that, that the customer, since he figures he is getting something, insists that he should get a lower price, and he very often gets that lower price in consideration of loading himself up with something he really does not need, or states he does not need.

We have never had any claims against the railroads with the exception of possibly to not exceed $500 in the years we have been in business. With the exception of the produce grown near by we shipped practically all the materials used around the mill, either by the owners or the employees, from the east.

The most southerly point included in the Pacific Coast trade is Ashland, 340 miles from Portland. The mills in that section of the country are shipping very little, if any, fir lumber east. There are mills as far down as Ashland and Medford and Redfield, that ship, but they ship pine lumber almost entirely, which takes a higher rate than the fir rate. The real movement of lumber east does not begin until you go to about the lower end of the Willamette Valley. I would say that nothing of consequence is shipped from south of Cottage Grove. There is some, but not much south of that. That is over half way from Ashland to Portland. So, while the rate reaches Ashland, the bulk of the movement, almost all of it, is from a point more than half way north of Ashland and nearer Portland than Ashland.

I am familiar with the mills generally in the Willamette Valley and I will say that the condition I have described is just the same all over the State of Oregon, except in reference to the mills sawing that railroad material or having contracts executed prior to this proposed advance. I have had numberless conversations on this subject, and some correspondence, and I find that the mills are in about the same condition we are in, or worse. I know that some of them are in very much worse condition—some of the large mills. I have had some letters on that subject, and some of those letters I think I have with me, covering that point.

We had the same eastern rates during the first ten months of this year as prevailed through 1906 and for previous years. I was not convinced that these rates would be advanced until I had personal assurance from Mr. Stubbs. I did not take into account in our business operations or plans any probable advance in rates before that time. When this information came more directly it was coupled with the statement of the approximate dates when those advances would probably take place. If I remember correctly the date given me by Mr. Stubbs was October 1st, but it was later changed to November 1st. He stated, however, that he was not quite sure of the time, but he expected it would be about October 1st. We knew all during the summer that this advance would not take place before the 1st of October, and probably not until the 1st of November. We made every effort within our power to complete the orders on hand prior to the advance, but we were not able to do so on account of the lack of cars. We did, however, get rid of quite a lot of our orders. The

only reason why our shipments were so much more during the first ten months of this year than they were during previous years was, we could not get the cars.

Of course, the advance in the California rates stopped shipments there to a large extent. The percentage of our shipments during the first six months of this year was greater than during the first six months of last year, but the number of cars shipped was considerably less, very much less. The only reason for that was because we could not get the cars. Prior to our knowledge of the advance there has been no reason why our shipments should fall off except our inability to get cars.

Our company have been in business, I think, ten or eleven years. It is a corporation. The present value of the property and plant is about $572,000. I do not think I can state how much money has been paid into that company exclusive of its profits; or how much of this present value of our plant is represented by money paid in independent of the profits of our business. The figures given you representing the value of the mills and logging equipment, are what those items cost us, less the depreciation as shown. This $572,000 is what they cost. I would not be able to know how much of that is money other than that derived from the profits of our business, for the reason that our company has other properties aside from the mill properties and logging equipment. I might answer by saying that we have made practically no profit during the time we have been operating, or very small profits. Our capital stock is $2,000,000. I could not state how much money we have paid in. I do not know how much of that capital represents money actually paid in. I have never been manager of the company and have not been in touch with that branch of the business.

Our company has not declared any stock dividends since the time I have been an officer of the company or had any knowledge of the stock part of the company, the corporation affairs. That has only been, I should say, four or five years that I have been in a position to know if there had been a stock dividend declared. I am now a stockholder. I will change that. I will say probably eight years, and in that time I have never been paid a stock dividend. If any had been paid I would have received one. There are no other active operations of our company outside of the mills I have spoken of. The other properties of the company consist of the timber holdings.

There has been no other source of income whatever except the operation of the mills and except from the occasional sale of outside timber or something of that kind; no steady income and no other revenue producing properties. I am not able to give a financial history of our company from that standpoint, for the reason that I do not know.

Cross-Examination.

I understand that this $2,000,000.00 stock is treated as paid up. It has not been offered to my knowledge to the public to buy. I never saw or heard of a prospectus some years ago inviting people to come in and buy some of our $2,000,000.00 of stock. After deducting all the items shown on exhibit 4, we made a profit in 1906 of $2.81 a thousand; and we cut in that year about 90,000,000 feet I think. The 80,000,000 feet according to the statement are the shipments. What we cut and what we ship are two different things. We made that profit on what we shipped. We did not make any arbitrary allowance for interest. That is the actual interest paid, which divided amounted to 70 cents for interest and discounts. We allow 40 cents per thousand feet for depreciation. The total investment in the mills and logging properties would be $570,000.00. In considering whether there was any depreciation in anything other than the mills and logging properties it would depend on what you would take as the standard of value. We figured this depreciation only on the actual properties subject to decay and loss. That was the mills.

$8.94 was the actual payment of cost. It does not include all we paid out—interest and taxes and general office expenses, etc. We had to pay for what we did not ship as well as what we did ship. At 10 cents a thousand on the 90,000,000 cut that would be $900,000.00.

The item of $56,000.00, which you have taken as interest, in the first place is not all interest; part of it is discount. I mean by discount, discount for cash, on the ordinary terms of sale. That is a deduction from our selling price. I could not separate that exactly. Ordinarily it is 2 per cent. of the amount of the invoice, when there is any deduction made. Those are the actual figures, and at the end of the year we ended up with $2.81 a thousand profit on the amount shipped, 80,000,000 feet.

That $570,000.00 is an actual investment in those two items, mills and logging property only. That is what it cost. What we paid for it in cash. I think I know that. The cost of the machinery and property and buildings, the actual construction of the property. That is not the aggregate amount charged to our construction account since we began operations. We charged off 40 cents a thousand for depreciation. My understanding is that our books are closed on the basis of this statement, and the deterioration would be charged off, the mill properties, and it is charged off each year and subtracted from the account representing each particular mill. It is a matter of fact that the depreciation has been charged off every year. I mean to say that that $570,000.00 is mills and logging equipment; that does not include the timber.

We paid for the timber varying prices. I am not thoroughly familiar with the early history of the company. I am familiar with the later stumpage purchases, of some of them. We are trying to earn interest on all our investments. That is not all the investments we claim to have made there, or all the value we claim to have. We have the value of the timber. That is the investment or value we claim to have in saw-mill business, and it is practically true from the operation of that plant that we have made $2.81 per thousand feet, but it would have been impossible without the timber behind it to procure a source of supply. We have charged ourselves with 50 cents a thousand for the timber and that is very much less than we would have to pay anybody else. It is not very much more than the timber cost us. The last we got cost a good deal more than that. I think the first timber we bought cost us more than 5 cents per thousand.

I hardly think that Grant Pass has been a good sized town, about as big a town as it is now, for the last 19 years. It has grown a good deal within my knowledge, which has been 15 years. I said that members of our company had logged off the town-site twenty odd years ago. I said they did get pine from around Bedfield and Ashland. My understanding is that the pine rate is higher to the East than it is on fir. The pine is largely in the nature of box shipments and I am sure it takes a higher rate than our fir lumber. I do not know as to the straight lumber; I know there is very little of it shipped. I do not think box shipments do not take the same rate as the lumber rate.

Desolation reigns in a good many sections in Oregon, over fifty per cent. of them are closed down and the mills are closing almost every day. The rates to Utah were changed twice. We did not ship anything to Utah during the month when the advanced rate was in effect. That was the month of November. I do not know whether we are shipping now. I have not been home since the first of the month. All the points we ship to are affected by that change in rates, and quite a good deal of our lumber goes to points where the rates are raised. I do not know of any change in rates in Oregon and Washington or in Idaho and Utah, except the one that is mentioned to Utah. We cannot ship to Idaho at all. As the tariff stands I think there was no change to Utah. To Colorado there has been a raise of 10 cents to the points we have been usually shipping to. Taking our shipments east to the Missouri river, they have been largely made to railroad companies and car building companies, for the ultimate use of railroads.

The shipment shown on Dixon exhibit 5, to McKeesport, Pennsylvania, was for the Pressed Steel Car Company. The car was selected car material; I should judge long sills and car lines and framing timber, and possibly siding. The net value at the mill was $640.00. I cannot tell you what we sold it to the Pressed Steel Car Company per thousand feet. There is no record of the invoice here. During that time I should say we got for that class of stuff about $20.00 per thousand. Not knowing just what was on that car it is pretty hard to guess. It was about $19.00 or $20.00 a thousand at the mill. The capacity of that car was 100,000; the load was 85,000 pounds. I should say that it would probably weigh about 2700 pounds to the thousand feet, and a large car would probably hold 31,000 or 32,000 feet or somewhere around there. We get from $19.00 to $21.00. I think $21.00 was the high price. That order was shipped sometime ago. If it cost $8.94, plus $2.03, it would cost about $11.00 on the average to manufacture. We did not make $9.00 a thousand on that shipment because in producing that high grade material we wasted a lot of lumber that we did not get anything out of. Some of that we burned up as culls. We have in our timber quite a percentage of stained blue, rotten, knotty material that we cannot ship on any freight rate we have now. I think our percentage of refuse is a little higher than 6 or 7 per cent. We did take all that out in the log scale.

Our logs have always under-run. We have not been able to make our log scale hold out at the mill on any kind of timber, the average of a day's cut. The Booth-Kelly Lumber Company has always had under-run on every years' operation. That is, we have had less lumber than we have had in logs, owing to the quality of the log. We never have made an over-run in any year as far as my knowledge goes.

We have never shipped any rough lumber into Kansas; some into Nebraska. We have shipped quite a little rough lumber into western Nebraska, railroad material altogether, however. None as a commercial proposition.

We have been able to ship nothing of consequence on the 50-cent rate. All the stuff we have shipped east of Kansas into Kansas, Nebraska and east has not been this $20.00 high class stuff; not east, except judging by the points of the compass. We shipped some low grades of material into Chicago —that is comparatively low grade material. For timbers and ties, varying in different years from common sized timbers and ordinary ties, we have gotten when it went to Chicago $8.50 or $8.00, to $13.50; and in some instances we got that $13.50 at the mill for ties that went to Chicago. The ordinary track ties, such as I presume is meant, we did not sell any of consequence in 1906. The ties I refer to were bridge ties, larger and longer than ordinary ties, and surfaced on one side, for which we got $13.50, our contract price for the year. We did, however, sell some ordinary track ties, quite a large contract, at $10.50 at the mill during the year 1906. The general price around Portland was not $15.00. I think there was a time when the price got that high, but I cannot vouch for that exactly. The bulk of our common stuff has gone south, or to this Utah territory, to California and locally in Oregon and Utah. We have lost money on a good deal of it. Otherwise we would have a higher average on our general output. We sell locally in Oregon just around our mills; not in Portland or any large market. That sale right locally has not fallen off so much. We have never gotten anything into Idaho. Our stuff we moved into Utah is capable of moving there now just the same as it ever did. We have the same markets under the present rates for our common lumber as we had before, excepting California. So far as eastern territory is concerned, we have not, because you remember I stated to you that we shipped quite a good deal of common lumber, rough stuff, to Chicago. We have not the same market for our common rough lumber now that we had before. We have sold

common rough lumber, yes, but we do not have to keep our lumber rough. We surfaced a large part of it, and shipped it to Denver prior to thirty days ago. A large part of this lumber goes into Denver. I do not think we will be able to sell anything there whatever with this advance in rates. There could not be any very large drop in our case in logs; our stumpage charge of 50 cents. The other is an actual charge for labor.

Answering generally, from reading and general information that I have, I would say it costs us more to manufacture our lumber than it costs the southern mills on account of the general cheapness of labor in the south; but I could not go into details on that because I am not informed. On those upper grades which we have sent east in the past for No. 1 flooring in 1906, I think the price at the mill ran on eastern shipments, from $26.00 to $30.00 for No. 1 vertical grain. That is my recollection of the prices. It went on down the line of the grades until it reached lumber that we sold for $9.00, $10.00, and $11.00 at the mill. It ran from $9.00 to $26.00 and $30.00 a 1000, for the stuff that we were able to ship east. That is about right. I think the low price that I gave you would not drop much below that, because it could not. The high figure, representing the good lumber, would drop materially, now, if there was any demand, due to the fact that a great many mills will have to go out of business, and they will have to sell their stocks for what they will bring. At a sheriff's sale they will not bring much. Men will have to sell $30.00 stuff which cost them $10.00, at what it will bring, because they will be forced out of business and will have to liquidate. This stuff that sells at $30.00 weighs about 2,000 pounds to the 1000 feet, or less. When it goes down as low as 1,200 it is not at that price. When it is cut in two it goes down to about half the weight, but it does not bring much more than half price. Understand, however, that there is only occasionally a carload of this $30.00 lumber moved. The logs do not make much of that grade of lumber. We never sold or aimed to sell on the price list made by the other members of the Oregon-Washington Lumber Manufacturers' Association. We got more or less as the occasion might be. We tried to get all that we reasonably could in every case. I have not one of our lists, but ours are very similar to the ones you have in your hand. I could identify them.

(Dixon Exhibit No. 6 and Dixon Exhibit No. 7, Record page 200, consisting of price lists of North Pacific Lumber Co., and

price list of St. Johns Lumber Co. of Portland, issued July 14, 1906, offered in evidence.)

Those are the same prices which were contained in our list of the same date. Those do not represent a comparative standard of values, from which there was a discount, or to which there was an addition. We sold sometimes below the list and sometimes above it.

(Dixon Exhibit 7-A to 7-M inclusive, offered in evidence, Record page 201.)

I think you have a wrong impression of those lists altogether. They were not the prices which from time to time we thought we ought to obtain for our lumber and which we aimed to obtain: They were, as I stated, a standard of values, as showing the comparison in values between one grade of lumber and the other, the weight, selling terms, and the cost delivered, taking the price plus the freight; and as I told you, sometimes we tried to get or thought we ought to get the price stated in that list; sometimes more, sometimes less. That was somewhere near the price. It was then $5.00 or $6.00 a thousand feet. Those circulars fix the standards of values between the different grades; but the lumber has been sold, at the same time, by different parties at $3.00 and $4.00 a thousand less than the prices stated there, and $3.00 and $4.00 more, the same grade of lumber; so they do not fix the prices in any sense of the word. The man who was getting a profit of $2.81 could not vary the price between $3.00 and $4.00, but some mills did.

The members of our association did meet and discussed prices. I cannot agree that we made these lists as indicating the amount we ought to get, for the reason that sometimes it indicated more than we thought we ought to get, and sometimes less; but the relations between the values of lumber, for instance common lumber and clear lumber, will change rapidly, owing to methods of manufacture, and estimates of weight and all those things. That is to say, there is quite a substantial change in the valuations between the different grades of lumber, one grade raised a little and another lowered a little, in comparison with the previous list.

All the way from three or four to thirty or forty used to meet when we fixed these price lists. We did aim to express in these lists the relation of the values. We sold our lumber, as I stated awhile ago, within five dollars or six dollars of that basis. We departed from our list ten dollars a thousand. We never got ten dollars over the list for anything. We have

got ten dollars below the list. It is pretty hard to find out what others were selling for at the time we were selling ten dollars below the list. It is pretty hard for a lumber man to find out what other lumber men are selling at absolutely so he can testify to it, but I can tell you what we were selling for. I think during the major portion of the time the Portland mills, during 1906, were selling at varying prices below the list. I do not believe they stuck to any of those published lists very long. I don't know what they sold for, only by rumor from buyers and others I think they were below. I do not think they were at these list prices. I know that to my own satisfaction.

When you first asked me the question, you brought in the year 1906. I did not understand you meant to confine yourself to any one year. I do not know that in that year I sold anything ten dollars below these list prices. I doubt very much whether we sold anything at five dollars below the list prices in 1906. Quite a good many at three dollars below the list. Numberless carloads of all classes of material, everything from common lumber to clear flooring. Mind you, there are several lists there covering those years.

All the time we had a California list and an eastern list I think, and the prices almost always varied since we had the two lists. I do not remember now the extent of the variation. It would be a simple case of subtraction of those figures. Primarily and necessarily there will be a variation in the two lists on account of the difference in weight of the lumber going to the two different markets, and the difference in the segregation between the different classes of lumber. We have departed from all of these lists here for the year 1906, I think to the extent of three dollars a thousand. The demand for lumber caused by the fire did not come until the middle of the year, you know. As a result of the fire, prices advanced quite sharply. We attributed the sharp advance to the result of the California fire. On quite a number of items, the clear fir finishing for window frames and so on, we departed three dollars from the list price. We sold for various prices all the way through. I think thirty dollars would be about the top price, the price I gave you a while ago for clear flooring, and from that down to fifteen dollars. This window stuff at the time that varied three dollars a thousand from the list, was from fifteen dollars to thirty dollars at the mill, owing to the grade and dimensions. I think on No. 1 flooring we did the same thing. The figures I gave you

ion that at the mill a while ago were twenty-six dollars to thirty dollars. Our list price on No. 1 flooring at the mill on July 14, figuring back with the freight, would be about twenty-seven dollars; and at that particular time we probably sold that No. 1 flooring as low as twenty-four dollars or twenty-five dollars. Your previous question as to the price of flooring did not refer to this list. That class of goods to Colorado, south, and some special stuff is all that we have ever been able to sell east of Kansas and Missouri river points.

Of the total shipments that were made out of Oregon it is estimated that about six hundred million feet of the entire output went out by rail. Very much less than half of that went down to California. If I remember rightly, from your record the shipment south was seven thousand cars, against some twenty-one thousand or twenty-two thousand cars east. I should judge from the carload shipments, about a fourth of it went to California and Nevada, but I do not know. There were only four hundred and fifty million feet out of two billion feet of lumber in Oregon that went east by rail at all. That would be about the figure.

I cannot say that that was the very best year for eastern shipments that we have ever had. It is the only year that we have hunted up the records for in regard to the whole state. I presume for the state at large that was the best year in our lumber history.

I should say of this four hundred and fifty million feet about seventy-five per cent. or more, or at least seventy-five per cent. went to Denver and the east. I am unable to make any segregation between those two points, Kansas and Nebraska, and east. I have furnished a statement exactly of our shipments, and I will have to guess at the other fellow's. I presume they would be about in proportion to our own.

I would not think our commercial sales would represent a fair criterion of where this stuff went, that is this four hundred and fifty million feet, on account of the railroad material that went with it. The railroads bought none of this stuff in our case f. o. b. the mill. We always add the freight rate when we deliver.

On this shipment to McKee's Rocks, Pennsylvania, we included the freight in the delivery price. If the freight had been less we could have gotten more for the lumber. This railroad material that we sell east of the Missouri river is several kinds—all kinds. It is ties, posts, stringers. Both car building material and railroad material. No common ties

sold that far east; but bridge ties or bridge timbers, six by six, eight by eight, stuff of that kind. I could not tell you what the various mills get for that kind of stuff. The common size bridge timber with us is between eight by eight and fourteen by fourteen, or twelve by fourteen rather.

We sell all in one order, but at a specified price for each item. The railroad buying the material gets to haul it, and that is quite an item; whereas they would not haul it if it came from the south. I think that is a large item. Another thing is, we think our fir material is better for construction purposes than the southern pine, and I think the fact that the lines using the material reach into the timber is a predominating factor—either the lines or their connections.

I do not understand that Item "G" on my statement east of the Missouri river includes both this railroad material and our commercial stuff. We have made a separate item of the material going east of the Missouri river for railroads. I think I know as to that. If I remember the list made up for your office, according to your specification, and in hurriedly adding it up, I thing that is the way it figures out. Fifty per cent. of our whole output this year went east by rail and 43 per cent. last year. I do not know anything about the percentages; but the statement is of the whole shipments, and I presume it is twenty-seven per cent. of the whole shipments that went east of the Missouri river. The figures asked of us to produce were in relation to our entire shipments.

As a whole, I cannot see but what our business would be fairly representative of the eastern rail shipping mills, taking everything into consideration. I have been looking this statement over and adding it up and the percentage if it has been figured right is of the total shipments. That would be not only of what goes east from Portland but of what goes south. In other words, it would be half of the material that goes through overland. That is not all of it that goes east. There is another item that goes east as well, for railroad construction. That is not included in the twenty-seven per cent. In my own mind I am positive that it is not included in it. That is three million feet and amounts to about eight per cent.

I think our business is a fair criterion of the other rail mills. The Portland mills ship quite extensively by water. I do not know the percentages of their output which goes east, but I know the shipments are quite heavy. The Columbia River mills can ship either by rail or water, but not those on the Astoria and Columbia River Railroads. I made an in-

quiry to get general results from the mills that are members of this organization, as to how this rate was going to affect the different mills, but not the exact figures. I did not undertake in regard to any of the mills other than our own, to ascertain in thousand feet or anything else of that kind, how much of this stuff went to any point in Kansas and Nebraska or east, which would really be affected by any change in the rates.

I prepared this statement showing to what extent our business would be affected, by request of counsel for the railroads, but I had another one prepared at my own suggestion, giving about the same figures, on my own initiative. Our mills in Oregan have closed down as a result of this change in freight rates. We have already been holding back a good share of our total output on account of inability to get cars, and if we have to hold back any more we cannot operate. That lumber, as I told you, was sold at from nine dollars and ten dollars to thirty dollars, but I will say, however, that if we cannot move the percentage of lumber we have been moving east, we cannot operate on the scale we have been operating on.

Mr. George Kelly is not the president of our company, but I know him quite well. Prior to 1901 the Booth-Kelly Company did not ship east of Colorado to a very great extent.

We made some shipments, I don't know how extensive, down into Indian Territory if I remember right and New Mexico. I am not familiar with the records prior to 1901. I do not think we shipped prior to that time a stick into Kansas and Nebraska and east of the Missouri river territory. We shipped very little. Our shipments were made to Utah and Colorado to a certain extent and California and locally. In 1901 we shipped east of the Missouri river 174,000 feet of lumber all told. In 1906 we shipped 21,000,000 feet. That is not practically all high class stuff. The railroad material was not what you would consider high class material. It was not clear. Quite a good deal of it was, however.

Prior to the Harriman merger people used to come and solicit our business from points east, and Kansas and Nebraska and east of the Missouri river. We had some kind of a way of getting into that territory, and we also had a way of getting into Colorado and New Mexico and old Mexico and the territories.

(Note: Record page 227 shows reference to testimony of Mr. Kelly in so-called merger case, beginning on page 222 and extending to page 240 of the printed book of evidence in that

case; but it does not appear to have been marked as an exhibit, but leave was granted to refer to it.)

By "cost at the mill" in my Exhibit No. 5 is meant cost to the purchaser. It might have been headed "value at the mill."

I have been engaged in the lumber business in Oregon about fourteen years, alone for a number of years and with a partner for a year or so after that, and then with the Booth-Kelly Lumber Company the balance of the time. I think the Booth-Kelly Company and its predecessors have been doing business for about ten years. I have been with them eight years; they began about 1897. We have no record of our lumber shipments that far back. The great rise and increase in our business east of the Missouri river in 1906 I think could be attributed to the fact that we got a better car supply during that year, got more cars for our mill, more capacity not more cars but larger cars, enabling us to ship more lumber in feet. We did not get anything like the cars that we needed. I do not know that we could have shipped more out of that output in 1906, but our output would have been greater and our shipments larger with more cars. In 1906 the freight rate adjustment to points east of the Missouri river was such that we could have shipped large quantities of lumber east of the Missouri river. At the same time we had a very strong California demand.

It is my impression that the differences between the shipments shown under the various heads from C to I inclusive in my Exhibit No. 3, and the total amount of our shipments went to California, probably to California, and some locally. Oregon and Washington are under one of the headings in the exhibit. Those were shipments, however, and the local sales would be those by teams. Our local shipments around our own home town are comparatively unimportant.

There was another reason for the increase of our shipments in 1906 over previous years, beside our having a better car supply. We took in that year large orders, the largest we have ever taken, for car material for the Harriman cars, for which they agreed to furnish the equipment and did furnish it. That accounts for the car supply and for the shipments in feet.

It is true that the reason why our shipments for the first ten months of this year were so much less than last year was because we were not able to get cars. We have no orders for that class of material this year, which the railroads were to

furnish cars for. Last year we did. We have not had such a good car supply, having reference to the sales made by our company in 1907 as in 1906. Our large increase in shipments east of the Missouri river in 1906 over 1905 was due to large orders which we received for railroad materials, for car building materials.

Our increase of shipments for railroad material purposes in 1906 over 1905, as shown under item H in Exhibit No. 3, was only about 900,000 feet. 1,100,000 feet, I think. Our general shipments east of the Missouri river increased a little less than 10,000,000, about nine and a half million. It is very possible that some of this car material is included in the shipments east of the Missouri river, which are not headed "Railroad Material." I know that it was for the use of the Harriman Road.

Our selected rough weighs 3,300 per 1000. No 1 clear, worked, weighs 1,900 pounds per 1000 feet. The common material worked would be somewhere from 2,700 to 3,000 pounds, and the 3,300 stuff is the rough common.

There was quite a good deal of agitation about the matter of getting the rate to Missouri river points reduced from 50 to 40 cents, and the Harriman Lines were approached informally, at least by correspondence, but I had nothing to do with it, and I am not familiar with the motives altogether. I think the result of that reduction would be an enlarged market for fir, the opportunity to ship more lumber into the territory. That was what they were after, the movement of a larger amount of traffic. I think that was the idea.

From copies of letters published in the press and the rumor that was in all the newspapers and in the mouths of all the lumber men relative to the matter, I know the Harriman Lines were approached a number of times. I do not know whether they declined to reduce the rate, they did not reduce it.

Explaining what I have testified to regarding our investment, I thought it might appear that the amount of interest we were charging against the amount invested in our plant was not shown in the true light, it appearing perhaps when figured out that it was rather a good sized interest charge against the investment. As a matter of fact we have at this time not less than $900,000 invested in lumber which we are unable to move and logs on hand, and open accounts. This amount should be in fairness added to the investment in our mills and logging equipment before taking anything for a basis for figuring interest charges, and on this amount we have, as our records show and as the statements I made show, made no reasonable

amount of interest. We have never been able to average six per cent., say, per year on the actual cash invested in the plant and stock on hand.

Another thing that I think was not perfectly clear, and I did not make it clear at the time for the reason that I wanted to stick close to the questions asked me, was in regard to the list that the lumber men used. I am familiar with the circumstances under which that list went into effect in our association. It is suggested now that we were the only lumber manufacturers in the United States who did not use a list, and all the people we came in connection with, the salesmen for machinery houses, belting houses, iron pipe, iron and steel salesmen, had a list representing or showing the difference in value, for instance, between half-inch black iron pipe, and one inch or two inch pipe, and that if that half-inch pipe was worth a dollar for a given amount, the two-inch pipe was worth, we will say, four times as much. It was suggested that we were backward in that respect, and it would be better for us to get a list, showing the relative values of our stock, so that if it was once determined that common lumber was worth $10.00 a thousand we will say, on that basis, clear lumber would be worth $25.00 a thousand, or if common lumber was worth $11.00 the clear lumber would be worth $26.00, and so on. That if a piece of dimension from 12 to 24 feet long was worth a certain amount, a piece of dimension from 24 to 32 feet long or from 32 to 40 feet, and so on would take a stated increase on account of the additional length, or in case it was an additional width, the same style of increase.

Explaining that, I will just say that our lists showed their value on the common items. You will find statements in there that for a different grade you add $5.00 a thousand to the price of common or substract $2.00 or $3.00, whatever the case may be, keeping the parity between the grades, the same all the time, regardless of what the base price is.

Now, another point, as to the $30.00 lumber that we sell, and what I say about our lumber is true of the lumber in the Willamette Valley, and to a very large extent of the timber east of Portland on the O. R. & N.; our logs run very largely to common and the percentage of $30.00 lumber in those logs is no more a criterion to fix the value by than the percentage of cream or the fact that there is cream on milk makes the value of the milk equal to that of the cream.

We have in our lumber less than 5 per cent. of this $30.00 lumber. We have not to exceed 20 per cent. of all grades of

clear, varying in price from $15.00 to $30.00. As against that, we lose about 5 per cent. of our logs in manufacturing. That is, our lumber scale, the amount of lumber gotten out of the log is at least 5 per cent. short of the measurements of the log, owing to defects in the log. Of the 95 per cent. actually manufactured, another 5 per cent. or more is thrown away, wasted and burned after being once made into common sizes, on account of the defects in it. 35 per cent. of the actual lumber manufactured in the Willamette Valley is a grade below common, usually called No. 2 common, and is sold for a little less than cost year in and year out. The other 40 to 45 per cent. is sold at varying prices from cost to $1.00 or $2.00 above cost, on up into this $30.00 lumber. Now it seems to me from our standpoint that what we care about and the vital point is what our average price is. If we have to throw away some of our lumber it is our misfortune. If we are able to make up half that loss by selling some at a higher price it helps to a certain extent to balance.

I have here a pamphlet from the Department of Agriculture, issued yesterday, giving the average prices for the year 1906 at the mill, of all the common woods in the United States. The average is higher than the average received at our mill, and I will explain that by saying that in some sections of the states of Oregon and Washington to my knowledge, there is timber vastly superior to the timber in the Willamette Valley and on the O. R. & N. east of Portland, that there is timber worth four times, I will say, as much as our timber, and these people, while in many cases they have to pay an additional cost for manufacture owing to their location, they do get a choicer and better grade of material, for which they get a higher price.

As to these average prices I would like to give you three figures. The yellow pine average for 1906 was $15.02; the average taken from several thousand mills; the Douglass fir average was $14.20, a difference of 82 cents in favor of the yellow pine manufacturer. The total of all the woods of consequence, the average of those woods was $16.60, a figure $2.40 better than our average.

Now then we feel at this time we are getting $2.40 less for our material at the mill than our competitors in all the other woods. These are prices at the mill, and now being asked to reduce our net price at the mill by an additional amount of $2.80, putting us $5.00 below this general average, makes an impossible proposition for us to handle.

I also notice in this pamphlet something very interesting in

relation to the advance in prices since the year 1899, to 1906, of the six leading woods of the United States, the advance being, in yellow pine, 77 per cent., cedar 66 per cent., in cypress and redwood 64 per cent., in poplar 73 per cent., and in Douglass fir 63 per cent. The latter is the lowest average advance of any wood. I think in the face of that showing we cannot be accused of advancing our prices unreasonably, and also in the face of the showing of the profits we have made.

The pamphlet of which I have been speaking is issued by the United States Department of Agriculture, Circular No. 132, dated December 11, 1907.

These averages include yellow pine, Douglass fir, hemlock, oak and everything. The price for each wood is given separately. Now I presume from our figures which I have explained and which I have not had time to total up, we will show something less than 50 per cent. of our output shipped east of the Missouri river. In the case of some mills I am familiar with the showing will be greater and in some less. I am unable to determine just what the average will be, but probably larger than ours.

I want to say that the price at which this, we will say, 40 per cent. of our material, whatever it is, is sold at, determines the success or failure of the lumber industry on the Pacific Coast in my opinion. The 35 per cent. that we sell at less than cost is sold close to the coast, or on the coast, or locally, perhaps locally, some of it.

The percentage that we ship east carries with it a profit sufficient to care for the lumber shipped east, and to make up for the loss on the other lumber perhaps. If we cannot ship that percentage of our lumber we cannot in any way that I can see make up for the loss on the other. If we cannot ship that from thirty-five to forty per cent. of lumber that now goes east I am unable to see how we can operate unless we can dump that surplus which we have been trying for years at great expense to work off back on the coast markets. If we did this there would not be any coast market in thirty days or less time because the coast is now absorbing all it can take care of.

A question was asked me by Mr. Prouty yesterday which showed me that he believed that if we could ship to Kansas City and meet a twenty-three cent rate in shipping to Denver and meet the thirty-four cent rate, we could have all the difference between the freight at those two rates as additional profit to ourselves. That does not follow at all and is not the case for this reason, we have the two lists, which were intro-

duced yesterday, one a base price at the mill which does not vary. The other is the selling price on a number of different rates. The selling price on each rate is made by taking this same base price at the mill and adding the freight. So that regardless of whether we sell a certain item on a fifteen cent or an eighty-five cent rate, we get the same price at the mill. Now if we are selling on the thirty-four cent rate, the only difference between that and selling where we meet the twenty-three cent yellow pine rate is that we will sell more material, sell a lower grade of material and do more business generally, and then, where we go on and meet the twenty-three cent rate, we make the same profit on what we sell, but we sell less, and we sell only those particular items called for, for that market, and that the yellow pine mill cannot compete in. I wanted to make this point perfectly clear so that there will not be any misunderstanding about our attitude.

Our logs are very much poorer than those logs on the Columbia west of Portland, and those of the Puget Sound logs that I have seen are poorer than the average. There is a very great deal of waste about our logs and other logs throughout the Willamette Valley. I just explained that we lost about five per cent. before we get the lumber manufactured and I think we waste at least from five to seven per cent. after that. That is clear waste. That would be a total out of the log of say ten or twelve per cent. In addition to that, we waste a very large percentage of the tree before we bring the logs into the mill. A large part of it is left in the timber.

The amount that we leave in the timber depends on the markets altogether. If we have a good market and are able to our low grades, we cut it up pretty closely. If we are not, we have to leave the tops to the small logs in the wood on account of our inability to market them.

Recently we have been cutting our timber closer, and I do not believe leaving over twenty-five per cent. in the wood of what could be taken out under any circumstances and worked up. I think it would not be an exaggeration at all to say that of the standing timber we leave twenty-five per cent. in the woods, we waste fourteen per cent. of what we take out of the woods and we sell thirty-five per cent. for less than cost, of what we bring out.

We are not making any provision for the waste. We just want a rate that we can do business on the same as we have been doing for the last ten years. We could sell the thirty-five per cent. east if we had a low enough freight rate.

I would like to state in relation to the waste, that there is such a thing as overripe timber, and the large percentage of the timber or a great deal of the timber in Oregon is what is called overripe. It is deteriorating on the stump each year. That is especially the case after fire has passed through the section, and very often it is the case with live timber that it noticeably depreciates year after year. A great deal of our timber is in that shape now. If cut within a year there will be a certain percentage of waste. If cut two years from now there will be a very much larger percentage of waste.

In saying that thirty-five per cent. of our output must be sold at a loss irrespective of any rate which we may reasonably expect, to eastern destinations, I was speaking from our records up to this past year. It has been our record that we had about thirty-five per cent. of our output that was sold at or below, I would say at least thirty per cent. of it sold below, below the actual cost of manufacturing it. That percentage that was sold below cost had to be sold at a closer rate than a forty cent rate and was shipped as a rule to California points and Oregon and some of it on the forty cent rate. Our record is that on the forty cent rate to the east, thirty-five per cent. of our output would have to be sold at a loss. We want a rate that enables us to make an average profit above our operating expenses sufficient to carry on the business. I do not think it is true with respect to lumber cuttings everywhere that the large percentage of it must be sold at what would be a loss if it was all sold at that price.

It does not apply nearly so much to the yellow pine business that a considerable part of the product is only available for nearby markets. The yellow pine timber is a larger percentage of clear and less waste than there is in our timber. The timber along the Columbia River and Puget Sound is very much more clear and less waste, and wherever shipped to the large cities they do not waste the slabs or the sawdust. It is all utilized. On the rates existing now we manufacture and sell laths to Kansas to a very limited extent.

In figuring our return we figured on the basis of selling eighty million feet and inventorying the other ten million feet at what it cost to manufacture. That is, still on hand.

There is more waste in some sections than in others and in many mills not nearly the waste that there is at our mill. I do not see how it could be possible to stop the waste in Oregon by the advance in rates proposed in this case. The waste in the cutting will be stopped but the deterioration in the timber

will go on just the same to a larger extent because it will not be manufactured.

R. A. BOOTH testified on behalf of the complainants, as follows:

I have been connected with the Booth-Kelly Lumber Company from its organization. The initial steps were taken in 1897 but the work as I remember it was begun in 1898. I possibly can make the account of the investment in the Booth-Kelly Lumber Company plainer by reciting briefly the history of it so far as the construction of the plant was concerned.

We first had a small plant. Later we added three others. We have invested in cash in the construction of these plants about three-quarters of a million dollars. We annually reduced that figure until it reached the figures given yesterday. I understand that those were taken from the books. In addition to that, of course, we have the investment that is necessary in carrying on the business, such as receivables and whatever is pertaining to the manufacture of the lumber, the logging, carrying the stock of lumber and carrying the stock of logs. Our investment in logs is quite large because we do considerable contract work, practically log a year in advance. For instance, we have at this time, to the best of my knowledge, about forty million feet of logs. That is the condition generally at this time of year. Now we have our own timber bodies, hence the cost of our logs is less because as we carry our accounts, we put them to the mill at the actual cost. That necessitates of course an investment in timber lands, and while it would not ordinarily require the investment in timber lands, yet it is fair to charge against the operation, to take the figures we have as the cost line, some investment in timber or else that could not be done.

The initial expenditure in plant for carrying on our lumber producing business has been about three-quarters of a million dollars. The five hundred and seventy thousand dollars which now appears on our books as that investment, is the balance which remains after charging off annually for depreciation, the amount actually expended. There were no profits of the business at the time the investments were made. The only profits have come, so far as our books show, from operation, and these were investments preparatory to operating and constructing the plants. The Booth-Kelly Company is a corpora-

tion and stock has been sold in that to various parties. No treasury stock of the corporation was ever sold for less than one hundred cents in cash.

Cross-Examination.

We have increased our stock from time to time. At the present time there are in the treasury 1274 shares, I think, or approximately that amount. When we commenced operating we were not a corporation. It was wholly experimental, and after we will say a year's operation there was a proposition to incorporate and take into our association other persons. At that time we put a valuation upon what we had. We invoiced it. We considered it worth thirty thousand dollars, and there was an addition made in cash to that of twenty thousand. That is, we incorporated it at fifty thousand dollars, the four persons who were then parties to the business, receiving seven thousand five hundred dollars each, and the others, four thousand and five thousand dollars each. That was the beginning, about 1898. It might have been late in 1897.

Later we increased, I do not think that I could positively say how many times. We have increased up to the present time at two different times, when the stock was increased in small amounts, when we revalued our timber lands and the parties who were in received an advance equal to the difference in valuation, equaling the difference in the actual cost in the expense, we will say, from $50,000 to $150,000, they subscribing with the other parties to the additional amount of stock and paying for it. Those amounts were trifling and the whole of it was inconsequential. I would say the first increase applied to about 25,000 acres of timber land. That might be inaccurate. The last increase was very shortly afterwards, and there was not a very great increase. The most of the increases have been when we had purchased additional timber lands. That was done for the purpose of obtaining cash to pay for the timber lands, and they were paid for at par. As nearly as I know we hold now about 225,000 acres of timber lands. We buy small quantities of logs from other people at the present time. This year it might be, say one or two per cent. At other times it has been ten or fifteen. We have other people logging for us. We do not do all of our own logging, but the most of it comes from our own lands. As policy we would buy from others if we could, of course, but the amount we actually buy of others of the stumpage that does not belong to us, is small

We have four mills now. Our first mill was situated at Saginaw. Our others are now situated, one at Coburg, one at Springfield and one at Wendling. The Wendling mill is on the Mohawk branch. That branch is 16 miles long, from the Natron line. To get from Natron over to the main line of the Southern Pacific, the distance between the two lines is less than one mile, as I understand; with the connection it might be 100 yards more, but practically that. Of course the lumber has not until very recently passed over that because it came down the Natron line. The branch line was built at our solicitation and by our contributing largely to the construction of it. We contributed the right of way and the ties. It was built under some stipulation and practically under agreement with us.

Re-direct Examination.

The Southern Pacific have and are operating two mills on that line, and there are four others that I know of, but my information might not be accurate as to that.

Our present plant almost wholly represents a clear investment in the stock of our company at 100 cents on the dollar, paid in cash, with the slight difference that I have explained. So that our investment now that way is two million dollars plus some surplus that has grown out of the earnings. I can say in toto what dividends have been paid from time to time and taken out of our business. We paid one-half of one per cent. a month for a fraction of a year, and would have continued, I think, had it not been for the exaggerated condition of car shortage. It was at that time that we stopped paying, and have never paid them since. This is the only year we have had any profits of consequence. Last year our profits were practically $20,000 and the year before $12,000. Our profits were fairly good last year. If we could have moved the stuff it would have been satisfactory. Prior to last year and the year before we had always made some profit. $12,000 I think is the least since we have been operating on our full capacity. Prior to that the percentage would not be much because we were operating in a small way. We have constructed as we have operated, commencing with a small mill and increasing up to four. Our property now, whatever its value is, is in the main the product of outside capital that I and our stockholders have put into it, not coming from the profits of the operation itself. Assuming that

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we have actually invested two million dollars, we have now to show for that sum 1200 shares of stock in the treasury, $570,000 in plant, 225,000 acres of timber land and $900,000 worth of logs and accounts. There is of course some indebtedness against this company which represents some of the purchase price of these lands today. Our bonded indebtedness is three-quarters of a million dollars. The floating indebtedness runs ordinarily between two hundred thousand and three hundred and fifty thousand dollars, owing to the time of the year and the movement of the logs. The par value of the stock is $100. As I recall, there is $127,000 at par in the treasury. Of the two million dollars I would say approximately 8 per cent., possibly 7, represents the increase in the timber lands at the times I stated. It is my belief that there was in the neighborhood of $1,800,000 actually went in in cash.

The bonded indebtedness includes the mill plants, that is, it includes the most of the mill plants. The smaller plant is not included but it covers the other three. Most of the interest referred to in the statement of Mr. Dixon was paid on that bonded indebtedness. We were compelled, when the shipments of lumber were largely broken, to take up our floating indebtedness, which was larger than it is now, and our credit was crippled so that it was necessary for us to dispose of the majority of our stock. We were not able to hold it; and that was produced by lack of transportation facilities. The method that was employed in carrying that was the one I now speak of. It was for that purpose that the bonded indebtedness was made. The bonds were issued three years ago the first of next July. The lumber market was not bad in 1904. It was not as good as it is now, but the cost of producing was less and the price was very satisfactory but that year and the year prior was the time that we were seriously affected by the car shortage. There was satisfactory progress in the manufacture of lumber all through the year 1904 in Oregon, but our profits were extremely small. If we could have made the movement of the lumber I think we would have had no occasion to complain of what we were doing, and the rates under which we were shipping, but our trouble has been lack of transportation facilities such as we have been shipping under at the present rate.

There was a great shortage in the fall of the year 1904.

EDWARD D. KINGSLEY testified as follows:

My home is in Portland, Oregon. I have been in the lumber business for six years. A large part of the time operating a mill in a town on the Astoria and Columbia River Railroad, about 62 miles west of Portland. At present, while I am continuing this operation under another management. I am manager of the Bridal Veil Lumbering Company, at Bridal Veil, Oregon, and treasurer of the same concern. That mill is 28 miles east of Portland on the line of the O. R. & N.

Both of these mills make all-rail shipments. The capacity of the mill on the Astoria and Columbia River Railroad is about 25,000 feet a day, and of the mill of the Bridal Veil Lumbering Company about 75,000 feet a day.

Kingsley Exhibit 1, offered and received in Evidence, is a statement showing the amount of lumber produced by us for a series of years, and where this lumber went to, and the percentage of shipments.

KINGSLEY EXHIBIT 1.

LUMBER OUTPUT BRIDAL VEIL LUMBERING COMPANY.

	Feet.
1894	8,406,527
1897	12,800,229
1900	18,238,765
1901	17,639,203
1902	13,996,868
1903	11,391,995
1904	16,885,248
1905	18,724,578
1906	20,556,261
1907 (10 months)	12,456,654

	Per cent. 1894	Per cent. 1897	Per cent. 1900	Per cent. 1901	Per cent. 1902	Per cent. 1903	Per cent. 1904	Per cent. 1905	Per cent. 1906	Per cent. 1907
Proportion shipped to Oregon and Washington	64	61	52	48	52	58	65	62	40	60
Proportion shipped to Idaho and Utah	20	25	19	17½	21	19	18	21	21½	21
Proportion shipped to Colorado	8	5	14	19	13	4½	4½	10½	14	6½
Proportion shipped to Nebraska and Kansas	5	.60	2	.09	2	.78	3½	3½	1½	1½
Proportion shipped east of Missouri River	46	1	3.3	2½	6½	2½	3	6	5½	5½
Proportion shipped east of Missouri River for R. R.	.....	.....	18½	.....	.....	.....	.....	.....	.....	29
Proportion of total output shipped to railroads	26	13	12½	8½	7	12	17½	19	11	.....

The lumber shipped from our mill goes principally all east of our mill. In the case of both mills we confine ourselves very largely to the manufacture of what is known as yard stock, which is the stock ordinarily carried by a retail lumber yard, just such yards as you will find in the City of Washington and every other city probably in the United States, consisting of building material, such as flooring, ceiling, siding, rustic dimensions, and small timbers. We deviate from that occasionally and work some railroad material, at times quite considerable. Of what is known ordinarily as sawing special orders, we do very little as a rule. The output of the mills on the Astoria and Columbia River Road, some of them have water shipment facilities both foreign and coastwise. Others are confined to the rail trade only and some of the very small ones ship their lumber to the factory trade in Portland and others are today almost wholly confined to shipping over the Northern Pacific east. Formerly we shipped the bulk of our lumber to Pacific, that is Harriman line points, but in the last two years the Harriman people have almost entirely wiped out our supply of cars, so that what favors we have received in the way of equipment have come from the Northern Pacific largely. It is generally understood that the Northern Pacific has acquired the Astoria and Columbia River Road, also the Portland and Seattle, which is supposed to be a part of the Northern Pacific, or connected with it.

The number of men employed at the Bridal Veil Lumbering Company has varied somewhat. It has run in certain periods of the last six months, from 175 to 200 men. The dropping off in the sales of lumber commenced very materially in the month of August, 1907. Both our mills are closed and both logging camps are closed. As far as I know the condition of our mill is a little better possibly than some of them, inasmuch as on account of our inability to get cars and the inevitable shut-down which faces me, I conceived the idea of putting in a retail lumber yard in a prosperous suburb just outside of the City of Portland and in that way I have been able to run part of the year, where other mills have had to remain closed.

My version of what caused the loss of trade is as follows: I heard of this proposed advance in rates, the rumor, I think, in the late spring or early summer, but I did not consider it could be possible, and I gave it very little thought. I assumed charge of the Bridal Veil Lumbering Company on June 1st. Subsequent to June 1st, or rather subsequent to the time of

the final announcement, or of the first official announcement of the advancement of rates, I attended several meetings of our association, in which this matter was discussed at some length, as it appealed to all of us in about the same manner. During the spring and summer we had an abundance of orders, more orders in fact than we really cared for, and while we had a regular traffic man who had been with the company for about 15 years and commanded a very strong trade among the yards in the territory in which he worked, we had been keeping him in to assist us in the construction of quite an elaborate planing mill plant which we are just now completing.

Following the announcement of the advance in rates our inquiries dropped off to a noticeable degree, and our mail orders, which had been coming in quite freely, and orders through brokers dropped off substantially. Along about the last of August our order book got so lean that I had gotten a little worried about it and I took Mr. Thompson and sent him out on his old territory, to get business for us. He made a trip substantially of five or six weeks, covering the territory which he had been calling on for fifteen years, and the territory which I believe today is the most prosperous it has ever been before, on account of the unprecedented crops, and also the excellent prices that the farmers are getting for their crops. His sales were not satisfactory to us. That territory comprises the eastern half of Oregon, eastern Washington, Idaho and part of Utah, and a little of Montana. Our company, I might add at this point, has been in business about twenty years, and being one of the first on the ground they naturally developed a very large trade nearby, which they have always retained to a large degree. Mr. Thompson returned and upon his return I asked him why his trade had been so unsatisfactory. I signified the fact that I was not pleased with his trade, inasmuch as I understood that he had been with the company so many years and had a large trade, and we needed the orders. He said, "Mr. Kingsley, I am really ashamed of my business. I took an order for one car on this trip where I ordinarily take from three to five." I asked him the cause of this condition and he said that there was a feeling of unrest among the trade, as a result of the announcement of the change in rates. The trade generally felt that when the mills of the coast were cut off from shipping their lumber east their territory would be the dumping ground for the surplus stocks from the coast, consequently they proposed to reduce their stocks.

Our order book grew a little leaner all the time, and a shutdown was to be inevitable in a short time unless we could find some business somewhere. So in the latter part of October, I think it was about the 20th of October, I took a little run out into Idaho, where I am reasonably well acquainted with a number of quite heavy buyers, and I felt that I could do some business if there was any business to be done, at least. I called on buyers in Boise and a number of surrounding points. There are a good many lively points there on account of the development of irrigation. There has been a great deal of lumber used in the last few years. I found substantially the same condition Mr. Thompson reported to me. The same reports came from dealers, and the question was put to me frequently by the trade, it was put to me in several instances along similar lines, "Tell me the truth of the matter as you see it; is lumber going to be substantially the same in value as it is today or is there going to be a decline, as is generally believed?" That question was put to me by two or three dealers.

On this trip I took two or three orders in that territory, three cars altogether, at a substantial decline in price. The first I heard of the financial panic was when I was in Boise two days before I started back from my trip, and this condition arose weeks and months before it was heard of in our country.

The former management of the Bridal Veil Lumbering Company about a year ago at this time conceived the idea of expending considerable money for the erection of a suitable planing mill plant for the manufacture of their products. They arranged for the construction of the same and let the contracts, and began the construction. I had no part in that until I assumed the management on the 1st of June. The work had gone on very slowly, however, and very few bills had been paid. The consequence was that that portion of the business was left to me, and unfortunately so, because I found that the demand for money in payment, in some instances exceeded by far their estimates. I had to take care of it, some of it at very critical times. The cost of this plant in round numbers will approximate $100,000. It is just now about being completed. As far as I know the Bridal Veil Lumbering Company and the O. R. & N. Company have had substantially the same rates to these eastern points ever since they have been in, the same as the Portland mills.

Knowing as I do the conditions which will result and also the margin of profit that the business of these mills had been

handled on in the past, from some little inquiry I have made of their business in the past, I should have considered it would have been a very poor business proposition to have invested money in the construction of this new plant there, had I known there was going to be an advance in freight rates on lumber. I do not think the management would have done so. I certainly should not have done so.

I am familiar to a considerable degree with the situation of the mills at Portland. I know the North Pacific Lumber Company, that is a water and rail mill; Clark & Wilson Lumber Company at Linton is water and rail. The Portland Lumber Company at Portland is water and rail. The Eastern & Western Lumber Company at Portland, Tongue River Lumber Company at Astoria, are water and rail. The Peninsular Lumber Company at Portland is exclusively rail. That company began operations in 1903 or 1904. I believe they are exclusively a rail mill. Their investment is very heavy. I have attended a great many meetings of lumber men in discussing this question of the advance in rates, and its effect on the industry in Oregon. At the meeting I attended subsequent to the announced advance in rates, I think all present were agreed as to the fact that there was a noticeable difference in their inquiries and in the business being received, and a weakening in the market. As far as we are concerned we have received very few orders from the east, and at these meetings all expressed themselves along about the same way, that inquiries and orders decreased very materially.

A good many of the men employed at our place are single men, but at the saw mill located in the mountains, four miles back from the main line of the O. R. & N. I think about sixteen or eighteen families reside, who are dependent wholly upon the industry. At the planing mill which is located on the O. R. & N. tracks, approximately 30 families reside, possibly 35, dependent upon the industry. I have had to relieve them almost entirely of their positions, let them out so to speak. Their rents are very nominal, and I voluntarily cut their rent in half to make it as easy on them as possible, so it averages about $2.50 or $3.00 a month to a family now.

I always supposed, including everything for car building purposes, railroad material or both, that fully 25 per cent. of our output went into this affected territory, Colorado and east. Our nearby trade is very large, however, on account of our being an old established business. The reason why only 25 per cent. of our output moves into the affected territory, it has such an effect upon the lumber business in the

State of Oregon and of the entire northwest, is that you cannot cram the trade in the affected territory into the limited territory in the west. The class of lumber that moves largely into the affected territory, consists of what we call the upper grades. A very large per cent. of manufactured lumber is a common grade of lumber, and we have to have a market for the other.

Assuming that these rates stay in effect and assuming that the result of these rates will prevent shipments east to the affected territory, the effect in my judgment will be that it will be a case of the survival of the fittest; that a few of the stronger and larger mills will continue to operate, and the weaker mills will have to liquidate, which they cannot do, and probably go out of business. The final result of that process wil be to simply throw the lumber industry into a few hands in my judgment. I believe it will wipe out quite a number of the mills that are not strong enough to go through the season. It will wipe out sufficient at least, to absorb this amount of lumber that has been going east. It will also have another effect. For the last two or three years the conditions have been improving in the lumber industry to such an extent that it is possible to clean up our land to a greater degree than ever before, in other words, to manufacture defective lumber, which we could not do before. I have known of some cases where perhaps 30 or 35 per cent. of the total timber standing on an acre has been left standing on account of its defects, and the unprofitableness of it in attempting to manufacture. The percentage, however, has been materially reduced in the last two or three years, on account of some improvement in the conditions, which enabled us to make a little lower class of stock. Also the loggers, who log for the markets and sell their logs to the mills in some instances, in the past have confined themselves to logging the clear trees, leaving the defective trees in the timber.

In case they all put the more defective logs in, the mill men would throw them out. In the last two or three years the mill men have been willing to take them, and conditions have been improving to some extent. But this change is bound to result in so far as the logging and manufacturing in Oregon is concerned, in that business taking a step backward. It will certainly be to the detriment of Oregon and Washington.

Beginning in 1901 conditions have improved so that at this present time we could manufacture lower grades of lumber and could dispose of a lower grade of product. As long

as general business conditions were better and our eastern market was good, in which we were able to put considerable common stock of a certain character and price had advanced to some extent, we were able to market a lower grade of stock and more common stock at nearby points. For instance, irrigation has developed considerable business in Idaho and Utah, eastern Washington and eastern Oregon, and then we have been gradually working into the affected territory with common stock. For instance, Colorado has taken a great deal of common stock, and Nebraska has taken some common stock in certain character of timber, and Kansas I think has taken some common stock. We have had since the last two or three years perhaps to a greater extent a growing nearby market, and since the development of irrigation also a growing far-away market. It has been an improving growing market. With the increase of local business there has also been an increase in the mills, a very large increase in the output of lumber. I should presume it costs us forty dollars a day, possibly a little more, possibly a little less, to take care of our closed mills.

When what was then the Oregon Lumber Manufacturers Association was organized in 1905 I believe, I was made chairman of what was known as the Market Extension Committee, a committee which was brought into existence for the sole purpose of extending the markets for coast lumber products into the eastern states, what is now the affected territory. We always felt that that committee was encouraged by the railroads to advance their sales in that territory. I knew nothing to the contrary. I had an expression from Mr. Miller one day that they did. In connection with the extension of that market the committee and individuals expended considerable sums of money for the preparation and distribution of quite elaborate samples of fir finish, which were distributed quite largely throughout the central and eastern states, among the lumber yards and among architects. We expended about five thousand dollars I think to show the merits and beauties of the fir finish.

Kingsley Exhibit No. 2 (Record page 306) offered and received in evidence, is a statement made from the books of the Bridal Veil Lumbering Company, by two parties that I employed from Portland for this special purpose. This shows the average selling price at the mill, of various kinds of lumber of the Bridal Veil Lumbering Company in the years from 1898 to 1906, both inclusive. Those prices are F. O. B. the mill.

KINGSLEY EXHIBIT 2.

AVERAGE SELLING PRICE FOR THE YEARS 1898 TO 1906, BOTH INCLUSIVE, BRIDAL VEIL LUMBERING COMPANY, ALL RAIL MILL.

	Ties.	Stringers.	2-in. Com. and Timbers.	1-in. Com.	No. 2 Com.	Select.	Clear.
1898, Aver...	$ 5.89	$ 7.42	$ 7.06	$ 7.37	$ 4.14	$ 8.74	$15.28
1899, Aver...	6.68	8.47	7.59	8.39	3.90	10.17	15.96
1900, Aver...	6.52	8.75	7.75	8.33	4.83	11.25	17.14
1901, Aver...	6.57	8.50	7.88	9.13	4.40	11.50	16.59
1902, Aver...	6.43	8.83	7.69	10.27	5.09	11.47	17.78
1903, Aver...	8.07	9.77	8.93	9.81	5.07	12.48	21.11
1904, Aver...	6.53	7.98	7.14	8.46	4.14	12.41	17.75
1905, Aver...	6.91	8.83	8.40	9.37	4.29	13.83	18.23
1906, Aver...	10.11	14.43	12.21	15.01	7.63	16.07	21.67
Averages....	$ 7.098	$ 9.217	$ 8.29	$ 8.613	$ 4.832	$11.991	$17.945

There is no market for lumber today in Oregon and it is very hard to say what the price of lumber is at our mill today. We have two traveling men out trying to get some business, to move some stock which is a burden to us, and I have given them authority to go as low as nine dollars for common lumber at the mill.

Cross-Examination.

Since June 1, our shipments to Colorado and east have been small. They would have been larger if we could have secured eastern cars as we needed them. We have a very fair supply of cars, yes.

The mill on the Astoria & Columbia River has no connection whatever with the Bridal Veil Lumbering Company.

I know in a general way about the fire that took place through the eastern end of Multnomah Company, and did so much damage, that the railroad company had to contribute to the general support of a great many people there. I know it was a serious fire. I do not think that that fire occurred very largely as the result of this thirty-five per cent. of timber left standing in the woods. I think if that timber had been cut, the boughs would have been there just the same. The fire caused great damage, and that timber which was temporarily rejected was destroyed and rendered of no value.

Bridal Veil is twenty-eight miles from Portland. I have seen no evidence of this fire nearer Portland than that. I saw no evidence of fire twelve or fourteen miles from Portland.

The average price for railroad ties for nine years has been ten dollars per thousand feet. The average for 1906 was ten dollars and eleven cents. We sold some ties to the O. R. & N. Railroad Company in the month of November, 1906, for twelve dollars. The average selling price in 1905 was six dollars and ninety-one cents. I certainly do think that we sold the ties at Bridal Veil for $6.91 per thousand feet in 1905 because I had the two parties that made this statement certify to its accuracy. I think the Bridal Veil big fire was in 1902. There were very serious fires along the Chutes River I think and many millions of feet of timber were destroyed. There was one day in particular when it was very dark on account of the forest fires. It had been a remarkably dry season.

Plaintiffs introduce in evidence the following: Reports of the Tongue Point Lumber Company, of Astoria, Oregon; the Eastern & Western Lumber Company, Portland, Oregon; Clark & Wilson Lumber Company, Linnton, Oregon, just below the City of Portland, and reports of the Peninsular Lumber Company and Portland Lumber Company of Portland, Oregon. These exhibits were filed in response to the following questions:

A. What is your total output for each of the years 1894 to November 1, 1907, inclusive?

B. What part of this output went by water, that is, ocean?

C. What part went to the States of Oregon and Washington?

D. What part went to Idaho and Utah?

E. What part went to Colorado?

F. What part went to Kansas and Nebraska?

G. What part went east of the Missouri River?

H. What proportion of east of the Missouri River stuff was railroad material?

I. What proportion of your entire shipments by rail was railroad material?

TONGUE POINT LUMBER CO., ASTORIA, ORE.

December 4, 1907.

(RAIL AND WATER.)

	1904.	1905.	1906.	1907.
A. Total output	34,108,480	33,420,272	49,090,594	34,987,701
B. Proportion total output shipped by water and Washington	.42 .075	.31 .15	.45 .06	.71 .06
C. Proportion total output shipped Idaho and Utah	.11	.15	.04	.01
D. Proportion total output shipped Colorado	.01	.02	.02	.01
F. Proportion total output shipped Kansas and Nebraska	.015	.04	.05	.03
G. Proportion total output shipped east Missouri River	.115	.125	.115	.07
H. Proportion total output purchased by railroads east of Missouri River	.002	.001	.003	.....
I. Proportion total output purchased by railroads	.026	.008	.009	.....

EASTERN & WESTERN LUMBER COMPANY, PORTLAND, ORE.

(RAIL AND WATER.)

	From Aug. 5 to Dec. 31, 1902. Feet.	1903. Feet.	1904. Feet.
A. Total output	46,792,063	80,938,680	75,564,465
B. Ocean shipments	7,591,500	27,827,158	19,227,076
C. Rail shipments, Oregon and Washington	2,980,369	4,253,072	6,197,731
D. Rail shipments Idaho and Utah	9,495,281	15,632,608	13,501,825
E. Rail shipments, Colorado	3,026,040	4,814,960	2,464,489
F. Rail shipments, Kansas and Nebraska	2,434,593	1,725,189	1,365,873
G. Rail shipments east of Missouri River	2,831,209	4,497,560	662,697
H. Railroad Material east of Missouri River	82,620	295,123	.....
I. Total railroad material	18,534,088	16,578,228	6,540,134

	1905. Feet.	1906. Feet.	To Nov. 1. 1907. Feet.
A. Total output	85,461,082	100,492,607	74,309,760
B. Ocean shipments	20,611,552	34,438,663	31,890,247
C. Rail shipments, Oregon and Washington	4,931,812	5,407,254	3,760,167
D. Rail shipments, Idaho and Utah	13,891,207	9,286,675	8,360,227
E. Rail shipments, Colorado	3,179,966	3,189,173	2,260,118
F. Rail shipments, Kansas and Nebraska	6,487,240	3,351,867	980,211
G. Rail shipments east of Missouri River	1,535,452	3,600,253	3,150,125
H. Railroad material east of Missouri River	82,620	293,123	.....
I. Total railroad material	18,534,088	16,578,223	6,540,134

CLARK & WILSON LUMBER CO., LINNTON, ORE.
(RAIL AND WATER.)

As required by the notice to produce in cause of Oregon and Washington Lumber Manufacturers' Association et al., complainants, vs. Union Pacific Railroad Company et al., defendants.

TOTAL OUTPUT.

A. 1905 (June to December, inclusive) ..... 10,830,485 feet
1906 ..... 33,793,573 feet
1907 (to November 1) ..... 37,588,438 feet

DISTRIBUTION OF OUTPUT.

	*1905. Feet.	1906. Feet.	†1907. Feet.
B. Proportion shipped from Linnton ocean	3,388,462	18,325,008	28,027,759
Per cent	31.2	.54	71.9
C. Proportion shipped to Oregon and Washington	40,106	1,629,588	1,636,084
Per cent	.37	4.8	4.3
D. Proportion shipped to Idaho and Utah	1,419,217	2,387,083	158,635
Per cent	13.1	7	.4
E. Proportion shipped to Colorado	512,470	1,011,261	636,473
Per cent	4.7	3.3	1.7
F. Proportion shipped to Nebraska and Kansas	69,850	736,064	949,130
Per cent	.64	2	2.5
G. Proportion shipped east of Missouri River	286,702	3,150,626	1,250,301
Per cent	2.6	9	3.3
H. Proportion shipped east of Missouri River for railroad	.....	1,655,333	480,437
Per cent	.....	52	38
I. Proportion of total output shipped to railroads	1,774,742	677,152	.....
Per cent	16.8	11	.....

*June to December, inclusive.

†To November 1.

Mill located at Linnton, Ore., and commenced operations June, 1905; therefore no prior records.

PORTLAND LUMBER CO., PORTLAND, OREGON.

DECEMBER 1, 1907.

(Rail and Water.)

DISTRIBUTION OF SHIPMENTS.

As required by the notice to produce in the matter of Oregon and Washington Lumber Manufacturers' Association et al., complainants, vs. Union Pacific Railroad Company et al., defendants.

YEAR 1900.

Total lumber shipped 5,788,401

	Feet	Per Ct.
Shipped by ocean	473,823	.082
Shipped to points in Oregon and Washington	57,524	.01
Shipped to points in Idaho and Utah	142,563	.025
Shipped to points in Colorado	267,172	.046
Shipped to points in Nebraska and Kansas	nil	
Shipped to points east of Missouri River	nil	
Material purchased for use of railroad companies shipped east of Missouri River	nil	
Total amount of material purchased for use of railroad companies	67,167	.011

YEAR 1901.

Total lumber shipped 16,282,993

	Feet	Per Ct.
Shipped by ocean	5,030,770	.308
Shipped to points in Oregon and Washington	779,211	.011
Shipped to points in Idaho and Utah	430,711	.026
Shipped to points in Colorado	329,771	.02
Shipped to points in Nebraska and Kansas	nil	
Shipped to points east of Missouri River	102,779	.0063
Material purchased for use of railroad companies shipped to points east of Missouri River	56,750	.0035
Total amount of material purchased for use of railroad companies	131,825	.0081

YEAR 1902.

Total lumber shipped 38,020,749

	Feet	Per Ct.
Shipped by ocean	10,795,770	.28
Shipped to points in Oregon and Washington	78,312	.002
Shipped to points in Idaho and Utah	1,489,784	.0396
Shipped to points in Colorado	1,694,436	.0446
Shipped to points in Nebraska and Kansas	435,449	.0115
Shipped to points east of Missouri River	1,119,228	.0293
Material purchased for use of railroad companies shipped to points east of Missouri River	116,854	.003
Total amount of material purchased for use of railroad companies	981,133	.0257

YEAR 1903.

Total lumber shipped	30,205,059	
	Feet	Per Ct.
Shipped by ocean	20,768,728	.69
Shipped to points in Oregon and Washington	427,755	.014
Shipped to points in Utah and Idaho	3,290,204	.109
Shipped to points in Colorado	131,263	.0044
Shipped to points in Nebraska and Kansas	144,255	.0048
Shipped to points east of Missouri River	247,191	.0082
Material purchased for use of railroad companies shipped east of Missouri River	nil	
Total amount of material purchased for use of railroad companies	201,294	.0066

YEAR 1904.

Total lumber shipped	68,891,524	
	Feet.	Per Ct.
Shipped by ocean	37,344,065	.55
Shipped to points in Oregon and Washington	1,594,557	.023
Shipped to points in Idaho and Utah	4,079,960	.059
Shipped to points in Colorado	41,894	.0006
Shipped to points in Nebraska and Kansas	nil	
Shipped to points east of Missouri River	339,533	.0049
Material purchased for use of railroad companies shipped east of Missouri River	38,132	.0005
Total amount of material purchased for use of railroad companies	45,447	.0006

YEAR 1905.

Total lumber shipped	95,054,643	
	Feet.	Per Ct.
Shipped by ocean	62,201,513	.65
Shipped to points in Oregon and Washington	1,011,538	.0106
Shipped to points in Idaho and Utah	4,735,265	.0497
Shipped to points in Colorado	461,900	.048
Shipped to points in Nebraska and Kansas	93,657	.01
Shipped to points east of Missouri River	3,144,622	.0330
Material purchased for use of railroad companies shipped east of Missouri River	1,278,143	.0134
Total amount of material purchased for use of railroad companies	1,516,396	.0159

YEAR 1906.

Total lumber shipped	104,084,893	
	Feet.	Per Ct.
Shipped by ocean	60,376,917	.58
Shipped to points in Oregon and Washington	570,584	.0065
Shipped to points in Idaho and Utah	2,046,528	.025
Shipped to points in Colorado	2,444,028	.027
Shipped to points in Nebraska and Kansas	1,744,670	.019
Shipped to points east of Missouri River	11,729,837	.1178
Material purchased for use of railroad companies shipped east of Missouri River	6,638,747	.0638
Total amount of material purchased for use of railroad companies	6,672,680	.0641

YEAR 1907.

(To November 30.)

Total lumber shipped	59,529,208	
	Feet.	Per Ct.
Shipped by ocean	32,793,958	.56
Shipped to points in Oregon and Washington	466,120	.007
Shipped to points in Idaho and Utah	3,155,345	.05
Shipped to points in Colorado	2,004,822	.0365
Shipped to points in Nebraska and Kansas	681,432	.012
Shipped to points east of Missouri River	4,360,825	.0746
Material purchased for use of railroad companies shipped east of Missouri River	2,354,770	.038
Total amount of material purchased for use of railroad companies	2,752,147	.0442

Mill was not in operation in 1894 and 1897.

STATEMENT OF THE

CURTISS LUMBER CO., MILL CITY, OREGON,

AS REQUIRED BY NOTICE TO PRODUCE IN THE MATTER OF OREGON AND WASHINGTON LUMBER MANUFACTURERS' ASSOCIATION ET AL., COMPLAINANTS, VS. UNION PACIFIC RAILROAD COMPANY ET AL., DEFENDANTS.

(Very Largely Rail.)

Year	(a)	(b and h)	(c)	(d)
1905	19,895,338	None	4,298,600	7,662,604
1906	20,346,360	None	2,321,000	9,836,500
1907	19,103,954	None	1,815,000	12,319,000

Year	(e)	(f)	(g)	(i)
1905	978,420	201,100	269,000	680,000
1906	1,151,000	260,000	1,315,000	876,000
1907	574,000	17,000	179,000	149,000

1907—Shipped via Yaquina and water to California, 1,400,000.

Letter (a) covers lines 24 to 31 inst. shown in margin.
Letter (b) covers lines 2 and 3 on second page of Notice.
Letter (c) covers lines 4 and 5 on second page of Notice.
Letter (d) covers lines 6 and 7 on second page of Notice.
Letter (e) covers lines 8 and 9 on second page of Notice.
Letter (f) covers lines 10 and 11 on second page of Notice.
Letter (g) covers lines 12 and 13 on second page of Notice.
Letter (h) covers lines 14 to 16 on second page of Notice.
Letter (i) covers lines 17 to 19 on second page of Notice.

PENINSULA LUMBER CO., PORTLAND, OREGON.

GENERAL EXHIBIT A.

This company started business at Portland, Oregon, in the spring of 1903, purchasing the sawmill from George W. Cone.

This company has no knowledge of the business transacted by George W. Cone.

From 1903 to date this company makes the following report relative to its business:

	1903	1904.	1905.	1906.	1907, 10 mo.
(a)	13,000,000	15,000,000	36,400,000	64,400,000	51,900,000
	%	%	%	%	%
(b)	....	....	....	2	2
(c)	7	10	17	7.5	2.8
(d)	19.2	21	32	22.4	20
(e)	2	3.4	2.1	7.3	11
(f)	1.1	.1	.7	5.1	5.8
(g)	2.1	2.5	8.3	10.1	8.6
(h)	....	.2	.7	3.4	1
(i)	15.7	8.4	8.3	10.4	5.4

STATEMENT FOR YEAR 1903, MARCH TO DECEMBER, INCLUSIVE

Cars shipped	285
Capacity, pounds	14,540,000
Average capacity	51,020
Weight of loads	12,828,700
Average weight of loads	45,013
Freight paid	$49,698.28
Average freight paid per car	$174.38
Worth of product at mill	$42,963.09
Average worth of product per car	$150.75
Number of cars east of Salt Lake City, Utah	83
Capacity	4,160,000
Average capacity	50,125
Weight of loads	3,629,500
Average weight	43,729
Freight paid	$15,537.80
Average per car	$187. 20
Worth of product at mill	$12,136.20
Average per car	$146.22
Freight based on new tariff	$18,636.55
Average per car	$224,54
Excess per car	$37.34

STATEMENT FOR YEAR 1904.

Cars shipped	299
Capacity, pounds	15,350,000
Average capacity	51,337
Weight of loads	12,565,800
Average weight of loads	42,026
Freight paid	$44,691.86
Average freight per car	$149.47
Worth of product at mill	$39,695.23
Average worth of product per car	$132.76
Number of cars east of Salt Lake City, Utah	76
Capacity	4,030,000
Average capacity	53,026
Weight of loads	3,316,700
Average weight	43,641
Freight paid	$14,003.13
Average per car	$184.26
Worth of product at mill	$9,225.64
Average per car	$121.39
Freight based on new tariff	$16,682.13
Average per car	$2,678.40
Average excess freight per car	$35.24

STATEMENT FOR YEAR 1905.

Cars shipped	1,218
Capacity, pounds	66,780,000

Average capacity	54,827
Weight of loads	56,831,380
Average weight of loads	46,659
Freight paid	$198,466.27
Average freight per car	$162.94
Worth of product at mill	$239,963.62
Average worth of product per car	$197.01
Number of cars east of Salt Lake City, Utah	271
Capacity	17,260,000
Average capacity	63,465
Weight of loads	15,000,170
Average weight	55,351
Freight paid	$65,960.68
Average per car	$243.40
Worth of product at mill	$51,630.74
Average per car	$190.52
Freight based on new tariff	$79,000.69
Average per car	$291.52
Average excess per car	$48.12

STATEMENT FOR YEAR 1906.

Cars shipped	2,051
Capacity, pounds	116,870,000
Average capacity	56,982
Weight of loads	99,713,275
Average weight of loads	48,617
Freight paid	$396,761.50
Average freight per car	$193.44
Worth of product at mill	$602,405.26
Average worth of product per car	$293.71
Number of cars east of Salt Lake City, Utah	778
Capacity	46,680,000
Average capacity	60,000
Weight of loads	40,020,980
Average weight	51,441
Freight paid	$188,019.67
Average per car	$241.67
Worth of product at mill	$224,434.62
Average per car	$288.47
Freight based on new tariff	$221,859.59
Average per car	$285.17
Excess per car over old rate	$43.50

STATEMENT FOR YEAR 1907, JANUARY 1 TO NOVEMBER 1.

Cars shipped	1,512
Capacity	101,779,000
Average capacity	67,314
Weight of loads	86,420,680
Average weight of loads	57,156

Freight paid	$362,142.89
Average freight per car	$239.51
Worth of product at mill	$627,027.13
Average worth of product per car	$414.70
Number of cars east of Salt Lake City, Utah	803
Capacity	55,405,000
Average capacity	68,998
Weight of loads	46,624,750
Average weight	58,063
Freight paid	$206,394.84
Average per car	$257.03
Worth of product at mill	$317,632.82
Average per car	$395.55
Freight based on new tariff	$245,173.91
Average	$305.32
Excess per car	$48.29

B. C. MILES, produced as a witness on behalf of the complainant, testified as follows:

My residence is Newberg, Oregon, twenty-six miles south of Portland. I am secretary of the Charles K. Spalding Company, which was organized in 1897. I am also manager of the Dalles Lumber Company. The Spalding Company has a mill at Salem, and one at Newberg, and the Dallas Company has a mill at Dallas. The combined capacity of these two mills is about 225,000 feet per day of ten hours. We did not have the Dallas mill in the year 1906. The output of the other mills was about thirty million feet for that year. At present the Newberg mill is closed, the Dallas mill is closed, and the Salem mill is running on some local work, some state contracts. Two of the mills are closed and one is running on some local work, which we have, running eight hours a day. With the exception of our mill at Salem, our mills are situated on the west side of the Willamette Valley. We are located on the Yamhill Division of the Southern Pacific Railroad Company, running from Portland south, on the west side of the Willamette Valley, Dallas being sixty-four miles from Portland. The other mill is located on the main line of the Southern Pacific about 50 miles south of Portland.

Our method of shipping is all rail over the Southern Pacific Railroad to the other railroads. We were employing prior to the closing down about five hundred men. We closed the mills because we were not able to get orders to sell the

products of the mills. We also had accumulated during this season, and we have on hand today about nine million feet of lumber which we have not been able to dispose of, part of which we had orders for but the orders were canceled, because there were no cars to ship it in. We had the orders but could not make the shipments.

As soon as we heard of the advance in freight rates, we immediately began to receive letters from those we were shipping lumber to, asking whether we would guarantee the rates then in effect, and if not, stating that the orders would have to be canceled. After the middle of September we received very few orders; so that on the first day of November, when the rate went into effect, we did not have that we could ship, to exceed five carloads, of orders altogether. The result of it was we had to close down. We had no business, although our yards were already well filled with lumber.

There are located on that branch I think about 38 mills, and I think that out of the 38 mills, twenty-five of them are closed today on account of this condition. It was along about the fore part of September that our customers began to ask if we could guarantee the freight rates. As soon as we first heard of the advance in rates we expected it would take place about the first of October, but the time was extended to the first of November. There was no considerable cancellation of orders which had been previously made until the last two weeks in October. This condition arose and this result was reached before the financial panic. I knew nothing of the financial panic until the 31st of October, if I remember rightly. The first knowledge I had of the proposed advance was in the latter part of May in Denver, Colorado. I was consulting there, trying to get some new business from a new customer, and he told me at that time he had just received a letter, I do not know from whom, stating that there would probably be an advance in rates in the near future, and he did not feel like buying very heavily at that time.

I should judge approximately thirty per cent. of our shipments are into this affected territory. If the territory were cut off entirely so that under the new rates shipments could not be made, the effect would be that we could not run our mills. The thirty per cent. taken away from our markets would force us to come in competition so severely in the territory left and the prices would so drop that we could not sell our stock at a profit. I have talked with several mer-

chants in regard to the matter, and their business was very seriously crippled. Men have been thrown out of employment and the price of labor has gone down, and in fact there has been a very demoralizing condition resulting in all kinds of business throughout our section of the country. That happened before the financial panic.

I have been manufacturing for eight years, I have been in the logging business for ten years. I am very well acquainted with the conditions of the lumber market out west and the eastern lumber market as well.

Under these advanced rates we cannot get into the market and into competition with the other sources of supply of lumber for the reason that we cannot add this price to our price and still get any orders. Our company has made some large investments recently in connection with the development of our lumber business. Originally when we started in business we had a tract of land on a small stream, the Clackamus river, about 50 miles from the Willamette river, and we got our supply of logs from that place. In order to do this we had to do our logging one year and saw the logs up the next year, which required a very large investment in logs. We also had this difficulty, that in manufacturing, if we should get an order for a large quantity of timber of a certain length, we would not have that specified length because our logs were all logged in advance, and we would not know beforehand what the market would demand. For that reason eighteen months ago we negotiated for the purchase of timber land on a small railroad running from Dallas to the Coast Mountains, in order to make it possible for us to overcome the difficulties I have referred to, and to make prompt delivery on special lengths of timber. At that time we made quite a large investment in this timber land referred to, and we made arrangements with the Southern Pacific Railroad Company by which we could ship our logs to the Newburg Mill. We were interested in that little railroad from Dallas to the mountains, and we made a trackage arrangement with the Southern Pacific Company for hauling our cars over their line to Newburg. In order to make that arrangement we had to buy an interest in that little railroad, and we sublet the contract to the railroad for doing the work. In that way we are interested in it. We did not have the capital to do this, and we had to go in debt quite largely. The purchase price was $175,000, and the purchase was made in July, 1906. We would

not have made this investment had we supposed at the time there would have been any advance in rates to eastern points.

We sold some lumber to the railroad company during the year 1906. We had an order for railroad material last year where it was specially specified that the cars should be furnished promptly, and we did receive cars for that material, when other material we had orders for is in our yards today.

Cross-Examination.

It was in the fall of 1906 and the early part of 1907. The order was from the Pressed Steel Company for Harriman Railroad material, we were told; I do not know what kind of cars they were. There was about half a million feet in that particular order. We got $20 a 1,000 for it at the mill. It costs us to produce lumber between $13 and $14. We pay $2.25 freight on our logs to get them into our mill over this railroad. We did not build the raliroad. We bought an interest in it after it was built. It is not a road which the Southern Pacific has any interest in. Our company is outside of that institution, that we are partially interested in. We pay $1.00 of it to ourselves and the rest of it goes to the other company, the Southern Pacific Company on their trackage. Their trackage is 40 miles long. Our mileage is 13 miles. We pay $1.25 to ourselves for 13 miles, and $1.00 to the Southern Pacific Company for 40 miles. We furnish our own equipment, and do the hauling. They do not furnish steam to haul the cars. Fourteen dollars is approximately our average cost on all lumber. We are completing a contract now for ties at $7.50. It is quite an old contract, taken in 1905. Ties generally were selling by the mills that did not have long time contracts for from $10.00 to $11.00 last year. I have been operating in Newburg for about eight years. I have not figured where our output went to. I think there was 30 per cent. shipped into the territory affected by this raise in rates. I do not know positively. I am simply estimating. That includes all territory east of Colorado that is affected by this rate, Colorado, and east. We bought our timber land in 1906. Our stumpage costs 80 cents a thousand on an estimate of this cruise. That was in July, 1906. Prices have been higher since then I think. Sales have been made since then at higher prices. We thought it was a bargain or we would not have bought it. It was sold to us by a gentleman who thought he was making a good sale. He had been manufacturing at Vancouver, and over on the

Oregon Water Power, and he had been manufacturing lumber in various sections for ten or twelve years, and he sold this to us after the San Francisco fire for 80 cents a thousand. This timber was about twenty miles from Portland. It is fairly well situated with reference to a railroad. I think there are thirty-one hundred and some acres in that particular tract. It runs in the neighborhood of about 45,000 feet to the acre. We do not aim to sell according to the list price that is published from time to time. We keep as near to it as we can, though. Of course, one of the purposes for which it is published is for giving general information as to what we think the prices ought to be, and also to distinguish between the different grades, differentiations that should be made between the diffeernt grades. We have a committee that does that work. It may be the case that whenever market conditions are supposed to change this committee publishes a new price list. That is perhaps so. We have always made a discount from that list. It is not a high list where you cut 90, 30 and 10 for instance. It comes nearly to the actual prices. We aim to get as near as we can to that list, but we have never been able to get the prices according to that list. One particular time we got more, I think.

There is a good deal of waste to our timber. In the Willamette Valley lumber there is generally a good deal of waste. I do not think it is as good timber as the Columbia river or Puget Sound timber. Our mills are working on timber where there is considerable waste stuff. I should judge our waste is not as large a percentage as the Booth-Kelly Company, judging from the testimony I have heard here, I should say possibly there was from 20 to 25 per cent. Most of the timber we are logging in is very sound and for that reason there is not the percentage of waste in that that there is in some other sections, for that reason. We do not have as much colored lumber. There is not as much colored stuff in that as in other sections. At the same time it is of smaller timber, and we do not have the same percentage of clear that the Columbia river might have, or that the larger timber might have. There is good timber in our territory. I know that within ten miles of our location there is choice timber, and also the poorer grades and I should say probably twenty miles. We are logging at the foot of the ranges of those mountains. We have not had the capital to go back very far yet. I logged last year in the Cascade Mountains. I crossed over from near Mill City last year to our Salem mill, about sixty or seventy

miles, and we also took logs from the Booth-Kelly district on the Mackenzie river, I suppose 140 miles. We have been transporting logs to our Salem mill for a distance of from 60 to 120 miles. Salem is situated in a farming section of the Willamette Valley. There are some mills near there, but they are not large mills. There is red fir, but no big timber near there. I was going to say, the rougher grades of timber are on the lower slopes of these mountains, and we have not got back to the better grades of timber yet. They are to be found in the higher altitudes. Within four of five miles of where we are getting timber now there might be practically as good timber as is to be found on the Columbia river. We have not got to that timber yet.

The average cut of the Salem mill would be more than 75,000 feet a day. The average would be 1,750,000 feet a month. The Salem mill has been there some twenty-five years. We have had it three years, since 1905. We were running it in 1905 and 1906 and continued to run it until this slump came. We transported our logs down the river, drove the river. It cost us $2.00 a thousand feet, and this stuff could be brought down from the other direction, sixty miles from the other direction, costing nearly as much, from $1.50 to $2.00 and we cut that at Salem. We have made fairly good money in the lumber business and made fairly good money at Newburg. At Newburg the bulk of our logs came about 110 miles, to the mill, until last year. We drove them down the river, and then towed them by steamboat. The drivink the Luckiamute cost about 50 cents a thousand, and the towing from there to the mill about $1.00 a thousand, so that would be about $1.50. Newberg is situated in Yamhill County, where there is fairly good farming locally. They raise good crops. Our present mill has been located at Newberg since 1905. We had a small mill there beginning in 1900. Transporting our logs this way and paying these prices for driving, we have been making fair money on the investment. I do not think you would call it big money. We made about 50 cents a thousand in 1904, as near as I can remember. In 1905 a little more than that, but not very much. In 1906 $2.50 a thousand. I mean that is what we received more than it cost us. We have no interest charge on our investment. We have an interest charge on what we actually owe, but we do not make a charge on our investment. When I state our loss, it does not include a charge for depreciation. We have used a different system from others in the matter of reckoning depreciation. We

built our mill in 1905. When we got the mill erected and ready for operation, we charged it off and called that the investment in mills, and everything added since then, perhaps ten per cent. each year, has been counted as operating expenses. That is the way we have kept our books, instead of the other way. We have kept an account showing the investment account during the year, but it is charged to operating expenses, and at the end of the year we can tell you how much was added to the plant, but it amounts to the same thing, the same thing as charging off for depreciation. I do not think we get the same prices for our common stuff that the Portland people do. Possibly two dollars a thousand less.

I am familiar with the various lumbering conditions throughout the western part of the State of Oregon. In figuring the amount of money made in investments, they vary in location and all kinds of conditions. There are investments that were made the last year at the present price of lumber on which they would actually lose money. I know two mills in our neighborhood closed down today. They are not able to pay their bills because they went into extravagant propositions in the matter of manufacture, basing their plans on the assumption that prices would be as high as they had been. I presume we get as much as the Booth-Kelly people get for their lumber; not a large percentage.

On certain of our logs we paid $2.25 freight. There were no additional transportation charges on those logs, nothing more than it cost ordinarily. It costs more to put logs on the car than to simply dump them in the river, I would say 25 cents more. It costs us 25 cents more, and then we have to unload them, and it costs something besides that in the way we have to do it. The cost would be about two dollars and sixty cents perhaps, including both the loading and unloading. We began logging at the railroad and we are now working back about a mile, I should say. We first moved these logs a mile in the ordinary course of logging before we put them on the railroad at all. The average cost of production to us is about thirteen or fourteen dollars a thousand. That is the cost for 1906 and so far in 1907. It was somewhat less in 1905. These logs that we have shipped over the railroad since 1906 have cost us approximately a dollar a thousand more than it cost us the way we got the logs before. I should say there was at least two dollars difference between 1905 and 1906. The lumber cost us twelve dollars in 1905. We took a contract in 1905 for seven dollars and fifty cents a thousand. We were sell-

ing our other lumber for better prices, but at the mill we had just bought at Salem we had no market, established, and we went to the railroad people and asked them if they had any business to give us, anything they could offer us, and they said we could cut some ties at that price, but that was the only thing they had to give us. At the same time we were getting nine or ten dollars in our local business there for the better grades of lumber, but we did not have a market worked up though at that time.

The average loading of cars there I should say is about twenty thousand to twenty-one thousand. On rough lumber I think the average loading would be 50 to 60 thousand, probably, at least sixty thousand pounds. On the better grades of lumber it would be less than that because we cannot get the full capacity for the car.

The ties are $7.16, and they are the poorest grade of lumber, and would otherwise have to go into the slab pile. Quite a good deal of the stuff would be burned up. We make about the same grades of lumber as Mr. Dixon's concern. Our logs at Newberg cost us $7.00 a thousand, actual cost, besides the stumpage, and while they show the whole cost of logging and milling within $9.84, I think, showing we went into a more extravagant proposition than they did. I do not say we made good profits last year. I say, in addition to that, over half our Salem product is marketed locally, at a fairly good price. The combined output this year was thirty-six million feet. We had approximately seven million feet surplus on hand before we had any intimation of this possible increase in rates, one-fifth of our yearly output. A great many of the mills in that section had that much, and some had a great deal more. I should think it might average that. I know of some that had less than ten per cent. So in the aggregate there was quite a surplus on hand six months ago. In our case this surplus represented the lack of ability to ship. We have been getting fourteen dollars a thousand for common, rough stuff in Salem this last summer, and other prices in proportion. Salem is situated about 50 miles from Portland, I think on the river. Steamboat navigation is open part of the year. There is some navigation all of the year. Freight rates from Portland in are reasonably low I guess, I think 7 cents per hundred pounds. Booth-Kelly and the Portland mills were not particularly butting into our territory or trying to undersell us this season.

There has been a fairly good market at Salem ever since

we began there. We got $13.00 in 1906 for our lumber I think. I think when we took the mill there we were getting $10.00 for common, rough. Stuff that we made into ties we probably could have made into common rough, but we could not have sold it there, and we had this surplus too. Up until the time we took it in 1905 the Salem mill had never shipped any lumber out of that country. They had simply run two or three months in a year to supply the local trade there, although they had the capacity to run all the year if they had had the market. Only a very small proportion of the cut was ties, of the cut of 1905, and we could not ship them, and the city did not let us pile them up in the streets, and that is the reason we had to get rid of them. That was the contract at $7.50, and the only place we had to put those ties was out on the street there.

Our average profit, as I stated, was about $2.50. We sold our local stuff at Salem for about $13.00 in 1906. Our cost approximated about $11.00 in 1906. In 1907 we sold the local stuff for $14.00. Our profit in that year was at least $2.50. The stuff we sold at $14.00 was only our common grades. We had other stuff that we got more than that for locally.

GEORGE P. RINN (Record, page 363), called on behalf of the complainants, testified as follows:

I reside in Chicago. My business is the manufacture of sash, doors and blinds. I have used Pacific Coast lumber in my manufacture in the past. We have been using in the past five or six years about half a million feet a year. We buy our Pacific Coast lumber delivered. That is the mill price plus the freight rate. If the price of spruce, of which we have been using most, were enhanced any, we could not afford to use it in our products. We would have to substitute other woods of a cheaper class. As I stated, we have been using about half a million feet a year, and the price during the past year has reached the limit that we can afford to pay for it, and utilize it in the manufacture of our products. We could use southern cypress for the doors and windows and interior work. We could use northern hard pine, I mean the Wisconsin, Michigan or Minnesota product, for the exterior work, in both of which we now use spruce, and some fir, or have been at least up to a short time back. Spruce or fir is more desirable. The spruce particularly is more desirable because it is more nearly like the old time cork white pine than anything

else. I said we used about half a million feet. That would be probably under the recent loadings, 25 cars. The increase in price per car to us would amount to from sixty to seventy-five dollars per car. I do not believe we could get from our customers an additional price that would absorb this advance in rates or any part of it. I do not believe we could get any more money for our spruce products.

Cross-Examination.

My business is the manufacture of sash, doors and blinds. We pay from twenty-eight to forty dollars per thousand feet for this spruce delivered in Chicago. It comes largely from the State of Washington, the Gray's Harbor district and the South Bend country.

It weighs for the best grades, varying from 2,000 to 2,500 pounds per 1,000 feet. It comes in dimensions from one inch to four inches in thickness. Random widths and random lengths, all the way up to any size. Sometimes it is dressed. When dressed it takes that lighter weight. When it is rough it runs up to 2,500 pounds to the thousand, if you are using the thick stuff. As a rule we try to buy the kiln dried, but there have been instances when we couldn't get a sufficient quantity of it kiln dried, and then we took it air dried. It weighed then approximately 2,000 pounds to the 1,000 feet. When not kiln dried it would run up as high as 3,000 pounds. Cypress for doors and windows and Norway pine for exterior work, such as porch rails, balusters and exterior mouldings compete with it. The cypress comes from Louisiana and Mississippi; and the rate to Chicago on cypress from Louisiana I think is 25 or 26 cents. From Mississippi it is practically the same.

These weights that I have given are the quoted standard rates on that grade of lumber, and they are also from personal observation on freight bills where I have figured out what they might run per thousand.

We have the Pacific coast price list and in determining whether or not this lumber could stand these advanced rates we bore in mind what the weight of these various grades of lumber were. I do not know that the weights have run from 2,000 pounds on dressed and kiln dried lumber, up as high as 3,000 pounds on rough, air dried lumber. The cypress when delivered in Chicago is a trifle higher in price for a similar grade, but it works out much easier as it is softer, to offset

which, the spruce works harder. The cypress is probably five or six dollars higher than the spruce. Spruce costs approximately $10.00 a thousand more to work in our factory than it would the same grade of cypress. By working it I mean manufacturing it into doors and windows. There is an advantage by reason of the preference which people have for the appearance of spruce over cypress of approximately four to five dollars a thousand. That is largely a matter of sentiment. In our part of the country folks have been educated to the old time white pine for years and years, and they want something that looks very much like it; and while a spruce product at the present time costs us a little more to manufacture and put it on the market, we do it. It costs us five dollars more. People do not pay very much more, if anything more, for the spruce product than for the cypress. It is simply an advertisement as much as anything else. We could in almost all cases use cypress where we do use the spruce, and we have reached the limit of $5.00 per 1,000 in using spruce over cypress. We make $5.00 a thousand more on cypress than we do on spruce and the profit is all absorbed in our factory. I doubt very much if we could equalize that by making a little less on spruce and a little more on cypress. If any advance were made on spruce we would return to the other woods. We could not afford to use spruce. We make $5.00 more on the cypress than on the spruce. If part of this advance in freight rates were absorbed at the west coast, so that the advance was only a dollar, I do not know that that would be so serious a matter on an entire car, but it seems to me in such a case it would be a matter of business judgment and we would use some spruce and some cypress, dividing it up and use the spruce where we had to, where the customer would not take anything else, and use cypress where he did not demand the spruce. We have used the spruce where we would have gotten out of using it, because the users are better pleased with spruce. We have used it very frequently where we have had the choice. In 1906 we sold most of spruce; also in 1905. I think we have sold more spruce in 1907 than cypress. The range of prices on spruce from 1905 to 1907 has not been very great. I should say the variation in the price paid for spruce from 1905 to 1907 in the same grades was three to four dollars, but at the same time these other goods have advanced in the same ratio.

Re-direct Examination.

We would not buy any under advanced rates. There has been a variation of three dollars in price during the past three years. One man will call on you and offer a No. 1 shop spruce at a certain price, and the following day a quotation may come in from another mill at three dollars below that, for the same grade, and then you use your own judgment as to which man will put up the better grade. This is a matter of experience.

To take a certain instance, and select a better grade of spruce, two inches thick, we pay $40 to $42; and the cypress has run from $40 to $46. As I say, the quotations at a given time will vary that much, one mill over another, or under another. The freight rate is a great deal less on the cypress than it is on the other lumber. I am unable to say why the cypress costs more in Chicago when the freight rate is so much less, because I have never manufactured cypress lumber out of logs, nor logged any cypress. I don't know why it should be worth more money unless it costs more to log or produce it. The manufactured article does not sell for very much more. The price is substantially the same. We manufacture very little white pine. A grade equal to spruce, select and better, which I have just said has run from $40 to $42, and in that neighborhood, in the spruce, would probably cost from $60 to $65 in white pine. In 1906 the better grades of white pine were up as high as $85. In 1893 white pine was chiefly used in our business in the making of doors and sash.

The production of white pine has decreased very greatly since 1900. As a factor of competition for the making of doors and sash in Chicago and contiguous markets, white pine is practically eliminated. I should not say that element of competition had nearly ceased in and about Chicago. I could not say that it had ceased at all. We are continually using spruce as a substitute for white pine, and explaining to our people that it is the nearest thing we have to the old time white pine, and they use it and are perfectly satisfied with it, and in many cases where no explanation is made, they believe it is still white pine. When we do not call attention to the fact that we haven't any more pine but simply ship them windows or doors of a good wood that is very near, why, they never say a word, and are perfectly satisfied, it is so nearly like it. When we list these spruce doors we list them as spruce doors, Washington spruce. I never bought anything except these special grades for door and sash.

I said there was a variation, not from $40 to $42, but that there was a difference of $2.00 in the quoted price of this spruce. It has ranged $2.00 higher probably now than it was two or three years ago; two or three dollars higher. That same difference exists at all times, you know. I don't know what the reported prices are just now, or what the mills ask for their lumber now, for we have not bought any. At any time within the past three or four or five years there has been a range in the quotations made to us by different Washington mills of at least two dollars or more all the time, depending on what mill we got it from. That is $2.00 a thousand. That of course depends on the grades, and different mills make different grades. I stated that a man uses his best judgment. One mill may quote their No. 1 shop at a certain price and another at $3.00 below that, and maybe a man will buy the higher quoted lumber, because it is better grade, and it will be cheaper for him to buy that at the advanced price, over the other man's quotation. The wood is the same but it is graded better. It may not be the fault of the manufacturer, but he grades it better. The timber is the same and the price list of the same grades varies that much. That is, one mill quotes you a certain price on a certain grade that is quoted as select or better; and another man quoted select or better at two or three dollars per thousand off from the first man's price, and that has been true for the last four or five years.

There was no radical change in the price of spruce in 1905; it was the same as in 1904 substantially. I am not buying anything at all under the new rates.

ARTHUR NOLLAU:

I reside in Chicago. My business is manufacturing mill work, sash, doors and interior finishings. I have been using Pacific coast lumber in my business. We use between 400,000 and 500,000 feet a year, spruce and fir mixed. We use spruce and fir for framing, sash and doors. At an advance in price represented by an advanced freight rate, or any part of it, we could not use either the spruce or the fir in our business. I am using other woods, the prices of which are on a parity with spruce and fir at the present time, and it is optional

with me whether I use spruce or cypress. The price is practically the same. All things being equal, I like to use spruce for the same reason that Mr. Rinn says; it looks nearer like white pine than anything else, and people seem to be better pleased with it.

If we paid a high price for our material we could not obtain a relatively higher price from our customers. We simply could not get it. The competition is such that people would use other woods, at a cheaper price, and we have got to meet that competition.

Cross-Examination.

My business is the manufacture of general mill work, sash, doors and blinds. The sale price in Chicago of spruce and cypress is now practically about the same. There is a little difference. There is a difference of five or six dollars in the cost of working up spruce and cypress. It may be ten dollars on certain work. There has been a difference of five dollars within the last year. At that time the spruce was five dollars lower than cypress and we used spruce. I think within the last year spruce is worth about two dollars more than it was a year or two ago. This spring the price of spruce was practically a couple of dollars a thousand above what we paid a year or two ago. There was no reason for the drop that I know of. The price of cypress dropped at the same time. Last spring the price of cypress was up. It has been going up for the past year, up to within a few months. It has been going up all through 1907 until within a few months. Spruce did not drop last spring. It has not dropped at all. There is very little difference in the cost in the past three or four years; probably about two or three dollars. I could not tell when that took place; it was gradual.

My business is all special; I do not make any stock work. It is all order work. We work according to special drawings and special specifications. I do not make any stock work whatever. We have no grades on our doors, or any given sizes; it is all according to the architect's drawings and specifications. We make them purely on specifications.

Re-direct Examination.

We buy all of our fir and spruce delivered in Chicago. We get the delivered price. Therefore we would not know of a change in the freight rates except by the price going up or down. The price never indicated any change in freight rates. It did not make any difference to me what the freight rate was. Spruce has been going up in the last three or four years. For select spruce we pay practically between $40 and $42. It varies. The lists are practically the same, but we seldom buy from the lists. There is a spread of from two to three dollars in the prices offered to us by different people from day to day from different mills in Washington and that has been the case for the last three or four years. We have used Washington or Oregon lumber in our business for the past six or seven years; none before that. I couldn't pay any advance under present conditions for that lumber, as long as I could buy cypress at the present prices, or yellow pine, or Norway. I figure that the spruce at the present prices I am paying, is about equalized with the prices of other lumber, and it is optional in 80 per cent. of our work whether I put in spruce or cypress. I can put in either one, and it depends on us entirely whether we want to put it in or not, unless the architect is very particular about wanting certain kinds of wood; and it is so hard to get these woods now that architects specify that you can use either spruce or cypress at your option. I think, to a great extent, that this advance in the freight rate from the north Pacific coast to Chicago will exclude or practically exclude the lumber for that reason.

I have not seen any indications that the exclusion of that source of supply in Chicago market will increase the price of the southern woods, but it might have such an effect. Cypress was considerably lower in 1904 than it is now. It has advanced more in the last four years than spruce has. We were using cypress in 1904, just about the same as we are now. It might be that the rate then was 60 cents just as it is now under the advance, but I always based it on the delivered price. The difference in prices of two or three dollars from different mills that solicited our trade was not always due to a difference in value or difference in grading of the different mills. Some of it was. In buying lumber of all kinds you will find two people quote the same grade of

lumber. You get both grades in, and there may be a big difference between one man's grading and the other man's grading, although they may call it the same. The same is true of any kind of lumber as well as spruce. And the difference in price may and does, to a great extent, merely represent the difference in quality, grading.

My experience is, when I have bought lumber from various people, I soon find out who makes the best grade, and of course, all things being equal, I prefer to buy from the man who makes the best grade, or even pay more for it. Under normal conditions there is a variation in the price of lumber, nominally of the same grade, of two or three dollars a thousand, and the purchaser must exercise his judgment as to whether in dealing with one party or another offering lumber, he will get the best value for his money. When we buy this lumber delivered in Chicago we pay the freight and deduct it from the invoice.

B. C. MILES:

Exhibit Miles No. 1 offered in evidence (Rec., 398).

EXHIBIT MILES 1.

LUMBER SHIPPED FROM THE CHAS. K. SPAULDING LOGGING COMPANY, NEWBERG, ORE., SHOWING FREIGHT CHARGES AND PRICE RECEIVED FOR LUMBER.

Shipped to.	Place.	Date.	Initial.	Car No.	Actual Weight.	Rate.	Freight Charge.	Mill Price.	Amount Invoice.
Pressed Steel Car Co...	McKees Rocks, Pa.	1- 2-07	M. C.....	33,628	86,200	62½	$538.75	$568.68	$1,107.43
Pressed Steel Car Co...	McKees Rocks, Pa.	1- 5-07	P. R. R.....	81,280	61,800	62½	386.25	493.34	879.59
McPhee & McGinnity..	Lodgeport, Neb...	1- 7-07	W. J. & S....	1,224	56,800	45	255.60	404.28	659.88
Pressed Steel Car Co...	McKees Rocks, Pa.	2- 2-07	C. & N. W...	83,380	60,000	62½	375.00	569.59	944.59
Pressed Steel Car Co...	McKees Rocks, Pa.	2-22-07	C. M. & St. P.	46,254	52,700	62½	329.38	375.37	704.75
Pressed Steel Car Co...	McKees Rocks, Pa.	2-26-07	C. & N. W...	93,862	39,000	62½	243.75	454.06	697.81
Morrison, Merrill & Co.	Salt Lake, Utah...	4- 2-07	U. P.....	81,818	77,500	40	310.00	430.94	730.94
E. G. West.....	Brady Island, Neb.	5- 8-07	L. S. & M. S..	10,782	50,000	40	200.00	249.91	449.91
G. W. Gates & Co.....	Levanna, Ohio....	4- 5-07	A. C. L.....	24,688	60,300	50	301.50	338.75	640.25
R. W. Bradley.....	Ft. Russell, Wyo..	4-24-07	M. C.....	3,044	60,000	60	372.00	301.49	673.49
R. W. Bradley.....	Ft. Russell, Wyo..	5- 8-07	C. B. & Q....	43,117	73,220	40	292.88	471.92	764.80
T. H. O'Neill.....	Ft. Russell, Wyo..	5- 9-07	C. B. & Q....	74,400	40,200	40	160.80	254.86	415.66
T. H. O'Neill.....	Ft. Russell, Wyo..	5-18-07	C. & N. W...	59,744	45,920	40	183.68	264.91	448.59
J. E. Painter	Cheyenne, Wyo...	5-21-07	C. & N. W ..	44,336	40,860	40	163.44	312.10	475.54
Hallack & Howard....	Denver, Colo.....	4-15-07	C. & N. W...	75,964	.....	40	332.00	586.57	918.57

The kind of stuff that, as shown on that Exhibit No. 1, was sent to McKees Rock, Pennsylvania, to the Pressed Steel Car Company, would vary in weight from 2,000 to probably 3,000 pounds, owing to the material furnished. If it was car siding or car lining which was kiln dried, it would weigh about 2,000 pounds. Car framing dressed would weigh about 2,700 to 3,000 pounds. The mill price was the price which we received from the purchaser, the column shown on the exhibit as "Mill price." That is the price f. o. b. the mill. The other is the price delivered and the freight charges are the exact charges taken from the expense bills charged back to us by the purchaser.

I couldn't tell you what kind of stuff that was that was sent to Lodge Pole, Nebraska, without referring to the invoice, nor the weight per thousand. I should judge from the weight of the stuff sent to Salt Lake, as shown by that exhibit, that it must have been either green dressed, or green rough; I don't know which it was without the invoice. It weighed, I should judge, from 2,800 to 3,000 pounds. I think I have a memorandum book showing the exact number of feet in those cars.

The shipment to Fort Russell, Wyoming, was different. That went, I think, into some government barracks that were being built there. We do ship common rough into that territory. On this Fort Russell order we furnished a large per cent. of the lumber that went into the barracks at these points. We simply took random cars in making up these statements as we came to them.

GEORGE M. CORNWALL:

I live in Portland, Oregon, and am publisher of the Timberman; it is a lumber publication devoted entirely to the lumber business. Have been engaged in publishing it or other papers connected with this business for eight years. During that time, it has been my duty to familiarize myself with the condition of the mills of the northwest, and I am familiar with their conditions.

A number of the Oregon mills as well as a number of the Washington mills are situated on water entirely, and some are situated on water and rail, and others entirely remote from transportation, and others entirely rail.

I would say to the Commission that I have taken the last forty days and kept up a constant correspondence with the

mills in Oregon relative to the question of their closing down, or the conditions that surround their business. Up to the present time and including the information which I received since I have arrived in Washington, I find that there are one hundred and sixty-five mills closed absolutely. In addition to these one hundred and sixty-five mills, there are a number of mills which are running on half time and some on quarter time. There are also some mills running steadily in the state on railroad orders, cutting ties and railroad material. In addition to the 165 mills closed down I might say that there are quite a number of other mills, I will say approximately fifty, that I have personal knowledge of, but received no direct reply from them, and hence would not like to be quoted; would not be in a position to state absolutely. In other words, I mean to say that the 165 mills I have heard from directly by mail, and the other indirectly.

Those 165 mills represent a production of about four and a half million feet daily. These closed mills have nothing to do with the coast mills. They are not in the segregation of coast mills, nor with the mills in the interior. It is only the mills that would be affected by this advance in rates. Up to the present time the effect on the mill industry has simply amounted to pretty nearly paralysis. About July we commenced to hear more or less rumors, at least I did myself, of the question of an increase in the rates. At that time it was suggested that the rate would become effective in October. From the end of August till the middle of September the mills reported that they were getting fewer orders from the territory where the increase in the rates would be effective, and by the first of October the mills found themselves in many instances practically without any eastern orders. Some few had a few come along, but as the time drew near the first of October, these mills were practically out of orders from that territory, and that is their condition today.

Assuming that this advance in rates prevents shipping, in my judgment, it would simply amount to this: that if these mills which are closed, which are not possessed of a large amount of capital, there will be only one thing left for them to do, that will be to liquidate. The final effect would be they would go out of the lumber business, and there would be fewer people engaged in the lumber business in the State of Oregon.

Mr. Teal: In connection with these rates, Mr. Cornwall, did you ever, personally, hear any statement made by any traffic official of the Harriman lines, as to the reason for this

advance; and if so, I wish you would state to the Commission the reason that they gave for the advance?

Mr. Cornwall: I heard Mr. Miller, traffic manager of the O. R. & N. Company say that, in his judgment, the lumber business was in a condition that was prosperous, and it could certainly stand this advance in the rates. He then went on to state that these rates of course were largely experimental, and if they did not work they would be taken out. The two reasons he gave were that it was an experiment, and the prosperity of the business justified the advance. I do not know that he had any other reason to offer. The statement was made in response to a question as to why the advance was made.

I publish the Western Railway Logging Directory covering the States of Oregon and Washington, giving the mileage of logging railways in those states, and our returns make about 1,085 miles of logging railways, I believe, from our last figures that we are making up for this year. I do not think there can be more than a couple hundred of miles difference between this total and the entire Harriman system in Oregon and Washington and Oregon. The mileage cost of those logging roads is about $10,000 a mile. The roads of which I publish this list are logging roads pure and simple. Some of them do a little commercial business, but so little that it could not be figured as any kind of an important item in the question of railroading. That investment is absolutely connected with the growth of this industry in those states, and could not be used for any other purpose. I have no knowledge of the transcontinental roads allowing these log ging railroads anything for operation.

The government reports show 300,000,000,000 feet of standing timber in the State of Oregon,; and in Washington about 200,000,000,000 feet. The lumber production of the United States in 1906 was something over 37,000,000,000. The production of the coast market of the fir lumber was, I think, about four and a half billion feet in the States of Oregon and Washington. The total production of lumber in Oregon in 1906 was two billion feet; of Washington about four billion feet, of all kinds of lumber and timber.

In my study of this situation, I have had occasion to look into the competitive conditions in those markets affected by this advance in rates, and my method of ascertaining has been to write to the different sections which would be interested in this increased rate, to find out what their sentiment was on the subject. The letters I received in answer are from

Colorado, Kansas and Nebraska. The general purport of the combined answers was that the increase of the rate would simply put Pacific coast lumber out of the market which it now possessed in the states, except in the case of some special material which could not be procured as easily from the southern states, or from Wisconsin, Michigan or Minnesota. The general result of my inquiries in that direction was that this advance in rates would simply eliminate the coast as a competitive factor in the markets where the advance is in effect.

Cross-Examination.

The paper that I referred to where I published those letters is the Timberman for October, 1907. At the time of the special issue of the Timberman I had about the same information on the subject of the advance in the rates that everybody else had, I presume. I was publishing items about how the business was injured. We get the paper out about the 19th or 20th of each month. I look into the facts that I publish here before I print them, to a more or less extent.

In the Columbia River district, about the 19th of September, logs probably were worth about $10.00. I think they were stationary as to price. The selling price of logs on the Columbia river about the 19th of September, 1907, was from $8.00 to $10.00; and they were showing a firmer tendency on the 19th of September; and I also wish to state that with the advent of the increase in the rate logging camps had got together and closed down their output largely so as to keep the output of logs somewhere in relation to the amount the mills would need; knowing that when November came there would be so much less logs required that the market, with a smaller output, would be still stationary.

In Washington, there had been a rise in the price of logs in 1906 of $6.00 a thousand on some grades of logs, and on some grades of fir logs. That was for most of the mills. Not all the camps. I should suppose it would be right to say there had been a rise in 1906 of from four and a half to six dollars per thousand feet on fir logs in the State of Washington generally. But it should be remembered that they have districts in the State of Washington where the price has always been a couple of dollars more than on Puget Sound. There has always been a difference in price.

The Washington Logging & Brokerage Company, to the best of my knowledge, is an association of loggers who handle

the selling, who are really a selling agency when the logs are sold to the mills. They were selling agents for the loggers on Puget Sound, as I understand it.

I think the law of supply and demand raised the price in 1906 absolutely. It was the fact that at the meeting of the Washington Logging & Brokerage Company, held in Seattle, on Saturday, September 14, 1907, the price of logs was reduced as follows: No. 2 logs from $9.00 to $6.50; merchantable, $12.00 to $10.00; flooring logs, $15.00 to $13.00. The Puget Sound market as reflected by the lumber business, would not stand any higher prices, and the association decided to meet the prices now prevailing in the Columbia River and Gray's Harbor districts. The selling agents of those loggers reduced the price from $2.00 to $2.50 per thousand on the logs to the Puget Sound merchants, in order to meet the competition of the other localities.

The item appearing in the special number of the Timberman, reading as follows:

"Hoquiam, Wash., Sept. 13, 1907.

"The Timberman: On account of the many logs in the fresh water being held back for the fall rains, our log market is fairly good. Cedar logs are bringing from $13.00 to $15.00, yellow fir from $10.00 to $12.00, No. 2s from $7.50 to $8.00. Of the twenty-four mills on Gray's Harbor, they are all running except to Western Mills and the Aberdeen Lumber & Shingle Company, both of Aberdeen."

fairly reflects the market on logs as we understood it over on Gray's Harbor, and I took pains to keep posted as to those matters.

I should think in 1906 the logs on the Columbia river advanced probably $3.00. I have known the logging business on the Columbia river rather intimately since 1889, and I know a great many of my logging friends have gone broke. That was in the early years, but in 1905 they made some money. In 1906 they raised their prices $3.00 a thousand, on the Columbia river, and I think the increase in the cost of labor and supplies that went into it, would probably take half of it anyhow. And on September 19th, logs were showing a firmer tendency on the Columbia river, due to the fact, as I explained, of the mills feeling the tendency and the loggers getting together and reducing the output.

(Witness' attention called to the following items at hearing, in the Timberman of September, 1907:)

"Sherman Brothers, Yankton, have added a 10x12 Seattle logging engine to their camp equipment.

"James Burch is installing a saw mill on Quine's Creek, near Glendale. The machinery has arrived.

"Beaver Lumber Company, Prescott, will install a horizontal band saw-resaw. The plant is now cutting about 90,000 feet a day.

"The new saw mill of Lyons & Johnson, Coquille, is practically ready for operation. The plant will have a capacity of 75,000 feet per day.

"Carlton Lumber Company, Carlton, has its new saw mill in full operation. The plant has recently been operated overtime on some special orders.

"Oregon City Lumber & Manufacturing Company, Oregon City, keeps the plant busy on local orders. Manager William Laselle is keeping things humming around the factory.

"Albany Lumber Company, Albany, expects to have a new mill in operation some time in October. The plant will have a capacity of 40,000 feet per day. Logs are already arriving at the mill.

"The Lebanon Paper Mills, Lebanon, have installed wood conveyor, 970 feet long and 50 feet high, which will give room for 20,000 cords of wood. The mills now consume about 15,000 cords of wood a year.

"The Oregon Lumber Company, Hood River, has placed on the market 1,500 acres of logged-off lands in the vicinity of Doe. These lands are particularly adapted to the production of fruit, and offer cheap home sites for many of the employes."

I think those items state the facts as we knew them to be.

(The witness' attention was called to the further items appearing in the Lumerman of September, 1907, as follows:)

"An order for three million feet of bridge material for shipment to Alaska has been placed among several of the Sound mills.

"E. K. Wood and Puget Sound Mills and Timber Company mills at Bellingham, completed an order August 23rd, for four million feet of lumber for Catalla, Alaska.

"The Northwestern Lumber Company, Hoquiam, operated five-quarter time during August to turn out special cargoes of lumber for Hawaii and the Orient.

"Sadder & Clark, of Newport, have received a contract from the Pan Handle Lumber Company, of Spokane, to supply them with twenty-two million feet of yellow pine.

"The Hart-Wood Lumber Company, Stockwell & Burrows, and S. E. Slade Lumber Company, Aberdeen, have been operating their plants overtime recently.

"The new saw mill at the Dickle Ship Yard, Raymond, is being rushed to completion, and is expected to be in operation early in October.

"An electric light system is being installed in addition to the regular equipment.

"Work on the New Mentzer Mill at Tenino is progressing rapidly. A mill pond will be excavated and a good water system installed. The new mill will be large capacity and better equipped than the one which was burned.

"Cougar Lumber & Shingle Company, Bellingham, has increased its capital stock to $500,000. The company is contemplating installing a saw mill. The members of the company are C. E. Funnell, True Uncaphas, and Carl Funnell.

"J. E. Murray, of Elma, Washington, has purchased the interest of the Young Bros. in the Young-Cole Lumber Company, of Eatonville. The capacity of the mill will be increased. An additional engine, electric light system and other improvements will be installed.

"The Stillwater Lumber Company, Little Falls, recently got out some timbers 20 x 20-05 feet. Mr. Olson states that at the present time there is more money for rail mills to confine their business entirely to rail shipments than by furnishing foreign cargoes where they have to compete with water mills.

"The Bellingham Bay Lumber Company, Bellingham, reports sufficient orders at present on hand to keep the mill running day and night until the first of the year. The company has added an electric tram road from the main section of the mill to their new docks. The cars are operated by one man, and the system has proved a splendid success.

"The Molberg Lumber Company, which filed articles of incorporation August 1, with a capital stock of $200,000, is planning extensive improvements in its plant at St. Clair Lake, four miles from Sherlock on the Olympia Line of the Northern Pacific. The plant at present has a capacity of 40,000 feet per day and this will be increased to 60,000. A single mill will be built with a capacity of 100,000 per day and a lath mill and box factory will also be added to the plant. J. P. Allen is president of the company.

"Announcement is made of the incorporation of the Pacific Coast Wood Pulp & Paper Company, of Aberdeen, with a capital of $1,000,000. It is proposed to erect a mill at Aberdeen with a capacity of 500 tons per week. By the use of special machinery, the refuse of the local mills will be utilized in making wood pulp. The mill will also manufacture newspaper stock, box board and wrapping paper.

"The Danaher Lumber Company's plant at Tacoma is again in operation. The capacity of the mill has been increased from 85,000 feet daily to 150,000 feet. A new planing mill has been added to the equipment and modern concrete dry kilns, which will handle 40,000 feet a day have been installed. The company is establishing eastern connections and will engage extensively in the rail business. Six hundred additional horse power in boilers and high pressure engines were installed to run the enlarged plant. Additional land has been purchased sufficient to give the company 1,200 feet of water frontage, and the same length of spur track, providing shipping facilities. W. S. Taylor is manager of the company and A. E. McIntosh, formerly with the Port Blakely Mill Company, is looking after the shipping end of the company's business."

I am willing to let everything go in that appears in the paper.

And the same is true with reference to the saw mills of Oregon, to which reference has been made, that were increasing their plants, some of them. The Commission ought to understand that the orders had been placed for the machinery months ahead. It takes sometimes eighteen months to build a saw mill; so that the conditions might be exceedingly favorable when the order was placed for the machinery, and might be entirely the reverse when the mill was ready to operate. Which was so in these cases. The price of logs simply held their own with the market for lumber.

I should say that the market was fairly stationary along about August 31 to September 8, 1907. I do not think the disturbance in rates had yet affected the tone of letters that were sent to me and published in that number to any marked extent. Probably largely due to the fact that the writers did not know there was any change in rates. These dealers might not have had a copy of them as published. I would not say that the loggers had reduced their prices about $2.00 a thousand from 1906 to a very short time ago, and that they reduced the price about $2.00 a thousand right after this rate took effect. The price of logs on the Columbia river today is about $9.00 to $10.00. For the best grade it has been up as high as $14.00 during 1907, and with the diminution of the demand for lumber, logs have gone down just as lumber has fallen. On that basis the fall would be $5.00 a thousand, and lumber has fallen equally.

I do not know that the mill men could operate today with this reduction in the price of logs, assuming that there was a demand for lumber, and make exactly the same amount of

money profit as in 1906. I do not know that for the reason that the increase in the price of labor and supplies which enter so largely into the manufacture of lumber has not been reduced yet. The reduction in the price of the logs which the loggers have made would more than cover this increase in the freight rate of even 10 cents a hundred, provided the price of lumber had not fallen equally with the price of logs. The reduction in the price of lumber is due to the fact that the market in which Oregon lumber can be sold is reduced in area. The price of logs has been reduced to the saw mill man approximately equal to the amount of the freight rate, or the increase in the freight rate, and if he had any demands for it, a man can sell lumber just as cheaply today over on the Columbia river, and sell it now and pay the increased freight rate and make as large a profit out of it as he could in 1906, but he has not any demand. There is a very slight demand in that territory of which you speak, where the increase in the rate will take place. We think that is due to the freight rate. We are able to sell cheaper than we were in 1906 to the extent of the reduction in the price of logs, but we do not get any orders, so it does not make any difference what the price is. This lack of orders commenced before the time when this freight rate went into effect, when the first intimation of the freight rate went out, or when the dealers got knowledge that the increase was really going to become effective, the decrease in their orders commenced, and it became more severe, of course, toward the end.

The price of logs has been reduced to an amount equal, if not exceeding the increase in the freight rates in some markets. A part of that reduction took place this fall, but you understand that this increase in the freight rate has also affected the country in which there has not been any rise, due to the fact that those people know that if this freight rate is maintained, all they have to do is to wait, and that with the crowding of the market the price of lumber will go down. Our California and foreign market is affected by the freight rate very materially.

I do not keep up with the yellow pine market to any great extent. Since I have come here I have heard there has been some reduction in the price of yellow pine.

The mills which are situated on water and rail and that can use both outlets to dispose of their product, knowing that their eastern market will be largely cut out, cabled their foreign buyers that they would be in a position to fill orders at

a lower price, and the result is that the foreign cargoes dropped practically in a week $2.00 a thousand feet when this foreign rate was known to become effective.

Speaking for the State of Oregon, as I am not advised as to the others, there are on the lines of the Southern Pacific, I think about 260 mills, which, during 1906, and the early part of this year, shipped into the territory to which this advanced rate applies. The total number of mills tributary to the Southern Pacific is 268. They can ship into that market, tributary to the Northern Pacific in Oregon, 215; tributary to the Astoria and Columbia River, 32. I will just add those up; about 315 mills. There are 50 mills on the O. R. & N. 165 are closed. The capacity per day, in round numbers, of the mills that are closed, is 11,000,000 feet. That is the capacity of the all-rail mills. The aggregate capacity of those which are closed is about four and a half million feet.

The aggregate production of forest products in the State of Oregon, in the year 1906, was estimated at two billion feet.

PHILLIP BUEHNER:

I live in Portland, Oregon, and am treasurer of the Eastern and Western Lumber Company; also president of the Oregon and Washington Manufacturers Association, and one of the plaintiffs in this proceeding.

We have only one mill now; that is located at Portland, Oregon, and has a capacity of 165,000 feet in ten hours, but we usually run the mill night and day. The mill has been run night and day every year since it was built except possibly the first few months, I forget which. We were running it night and day last year, and this year up to the middle of November. When I left there, the mill was shut down, closed.

Including plant, stock on hand, logs, accounts and real estate, investment that our company has in mill and plant connected with the mill operations, would be close to a million and a quarter of dollars.

As president of this organization, I am certainly interested in the consideration of freight rates of the State of Oregon. My mill is both a water mill and a rail mill. Last year we shipped about a third of our cut by water, and the balance local and rail, and about the same this year. We have a Northern Pacific outlet, connected with the Northern Pacific, and we are connected with the Harriman Lines also. So we

have all the connections we have in that country by rail, and in addition to that, the water.

I have prepared a diagram showing the amount and price of logs and lumber in the State of Oregon for a period of years. This plat or chart shows the absolute prices we paid for logs, for each month of the year. (Exhibiting chart or plat to the Commission.)

I show here on a plat or chart the absolute prices we paid for logs for each month of the year. This shows for 1900. This shows the selling prices of common lumber, from 1902. We had a fire at our western mill, and that burned down in 1902; and we did not have complete data from that time on, but I instructed the secretary to take our sale tags and give the exact prices we paid for logs for each month, the average price and the variation, and also the selling prices we obtained for each month of common lumber, and that shows how it varied in months and years. (Indicating on chart.) The heavy line is the price of logs; as you can see; you can see how the price varies there. It varies only a dollar at a time. This is the selling price of common logs. (Indicating on chart.) You see that that also varies. That sometimes went below the selling price or the cost price of the logs. Here is where the San Francisco disaster occurred, as you can see (indicating on chart), and prices went up there, as you see. The logs followed very closely, as you see. We never paid over $8.50 for logs; and that for about two months, although just at that time the average price of our common lumber was $15.50, for about six months.

This is cost. (Indicating.) When the drop in lumber began, it dropped from that $13.50 to $9.00. The lumber has been selling in that country for less than $9.00, but we have not sold any. Logs dropped from this (indicating) in February or March. This is the highest price this year; $13.50 down to $9.50. I think that was in September. Then they recovered one-half a dollar, and then they went down again the 1st of December. They went down again to $9.50. That is yellow fir. There is one thing about this I ought to explain. This is a base of lumber, this is a nine dollar base, and getting to 1906 the rise was higher and quicker than this chart indicates, for the reason that we had a lot of old business on our hands, which we shipped out at old prices. The market prices of lumber at that time were higher than usual.

At the same time, when it dropped, it dropped quicker than is shown here on the chart, on account of old business.

The sudden drop in September or October was due almost entirely, in my judgment, to the notification, to our being told that there would be an advance on eastern rates. After the rates were published, the orders were cancelled. No orders were sent in at all and the prices dropped very rapidly until the time came we had to shut down both our day and night runs until we knew more about it.

I am somewhat familiar with the Peninsular Lumber Company. They are in Portland. They ship entirely to the eastern markets and all rail material. As general information, I know that their mills in Portland are in about the same situation that we were in. The general feeling among the mills was that the proposed advance would probably compel us all to shut down, at least temporarily, and you might say they all lost their nerve, so to speak. I told Mr. Miller that we better have the rate advanced at once than to have that uncertainty. Mr. Miller is the traffic manager of the O. R. & N., and I requested him in July to come out at once and let us know whether these rates would be put into effect, and he said yes, that they certainly would go into effect, but they would not go into effect until October. As president of this Association, I had conferences with Mr. Miller, as traffic manager of the Harriman System in the west, and tried to show him what the effect would be if this advance in rates went into effect.

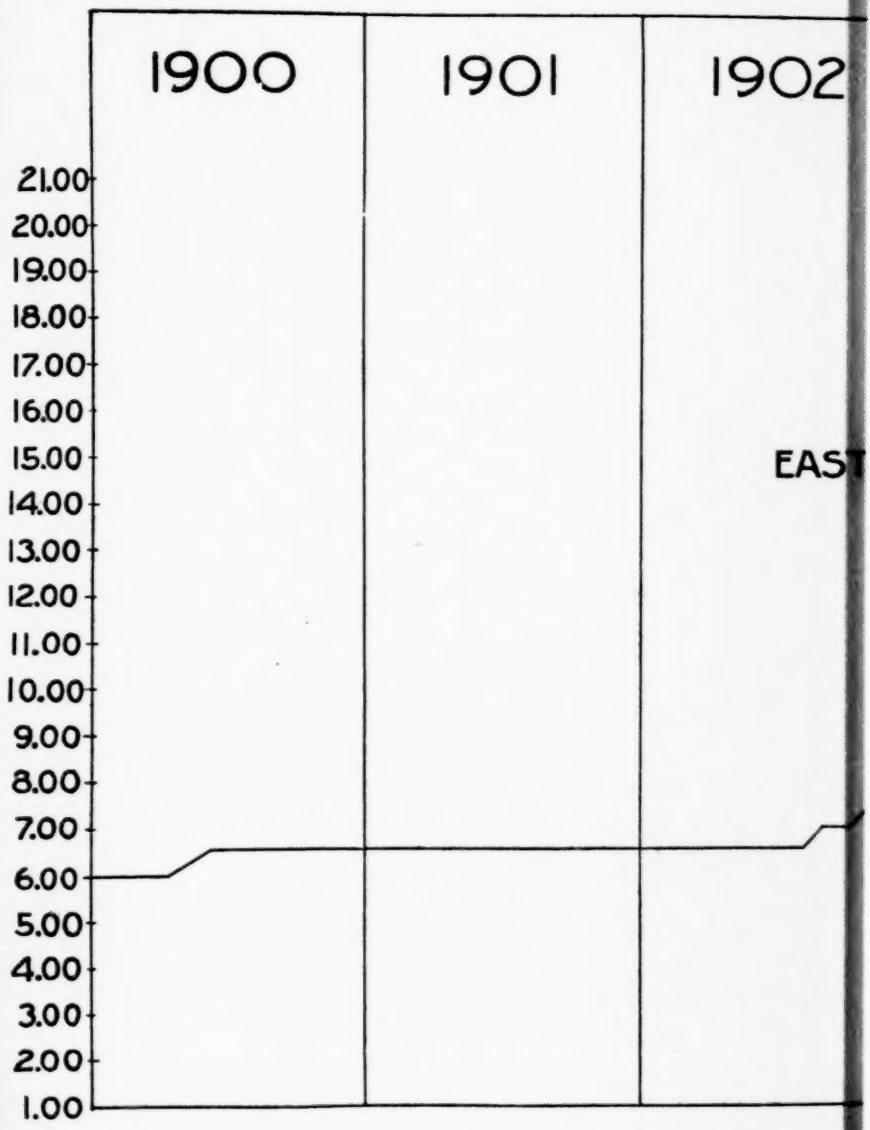
We went to see Mr. Miller several times, and on one particular occasion, when Mr. Harriman was there, I was particularly anxious to impress upon them that we would lose Denver as a shipping point if they raised the rate from 40 cents to 50 cents against a Southern pine rate of 34 cents. I told him that as near as our secretary could ascertain, that the fir was only about 30 per cent. of the business in Denver at that time, and to handicap us more would certainly exclude our common lumber from that market. Mr. Miller said: "It is more an experiment than anything else, and if not satisfactory we will withdraw it." That was his answer to that.

He stated substantially that the lumbermen were prosperous and that the prices justified an increase. There was a time up until lately the mills could ship some common lumber up to the Duluth and Minnesota Transfer Companies.

Considerable to Colorado and Wisconsin, and all the large dock orders, a great deal. Also rough lumber for car material and finished lumber for that also.

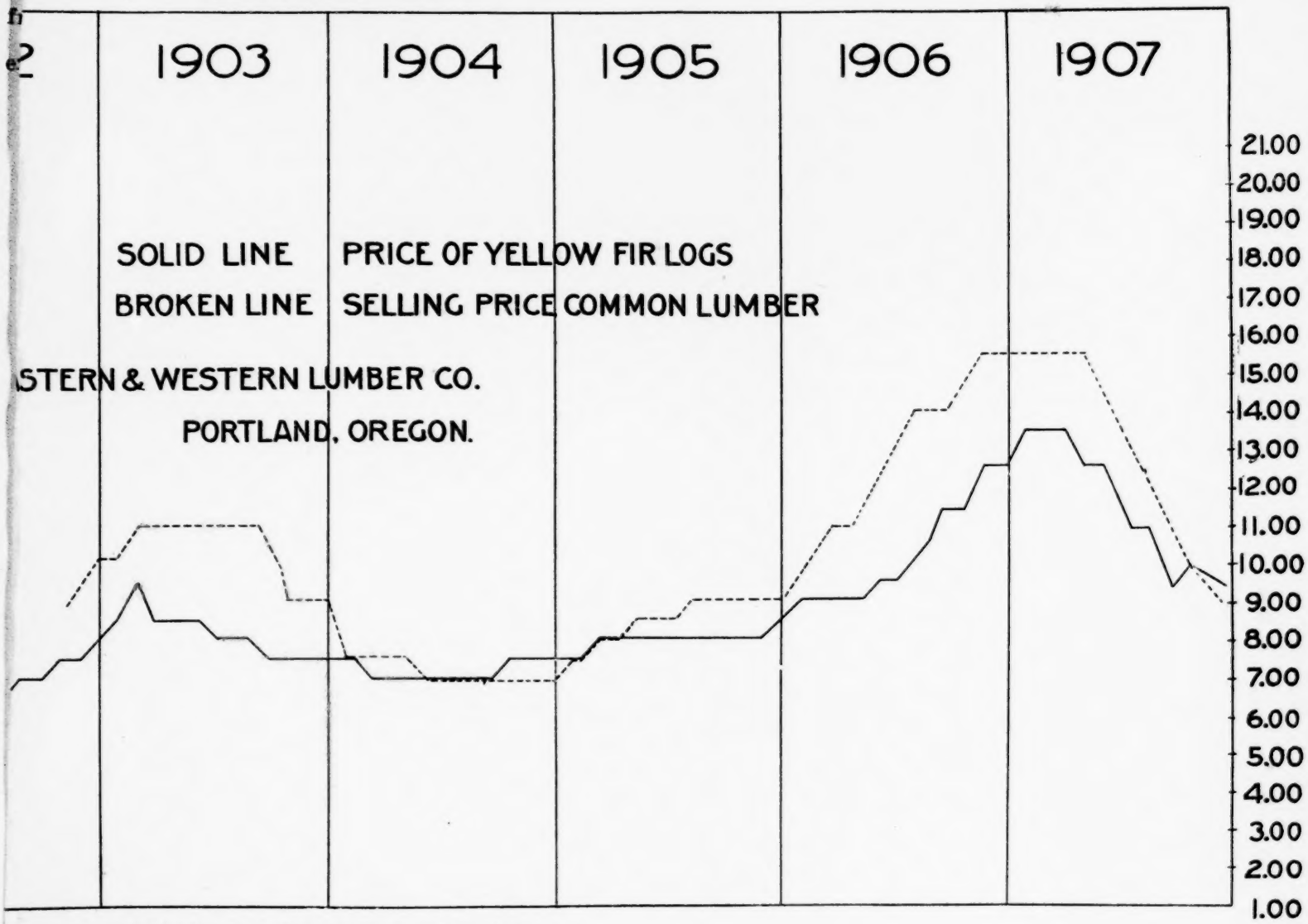
I have here also a chart to show the rate per 100 pounds from Portland on the different lines, old and new.

The two charts in question were introduced in evidence as exhibits, Buehner 1 and 2. (Rec., 457.)

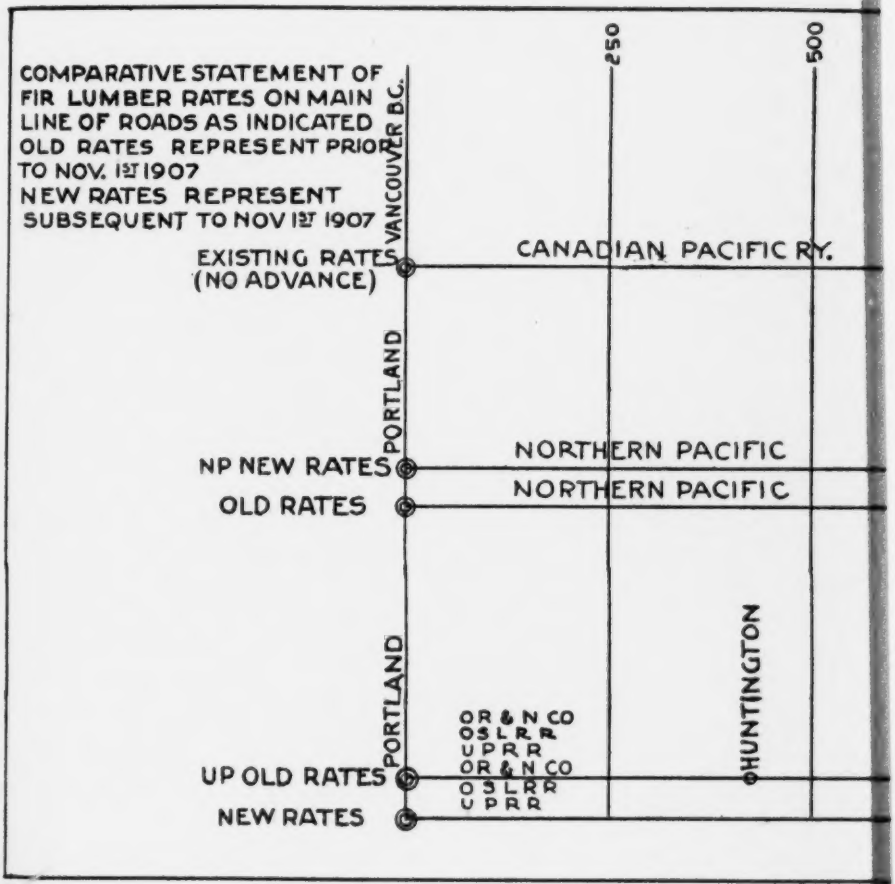

1900
1901
1902
21.00
20.00
19.00
18.00
17.00
16.00
15.00
14.00
13.00
12.00
11.00
10.00
9.00
8.00
7.00
6.00
5.00
4.00
3.00
2.00
1.00
EAST

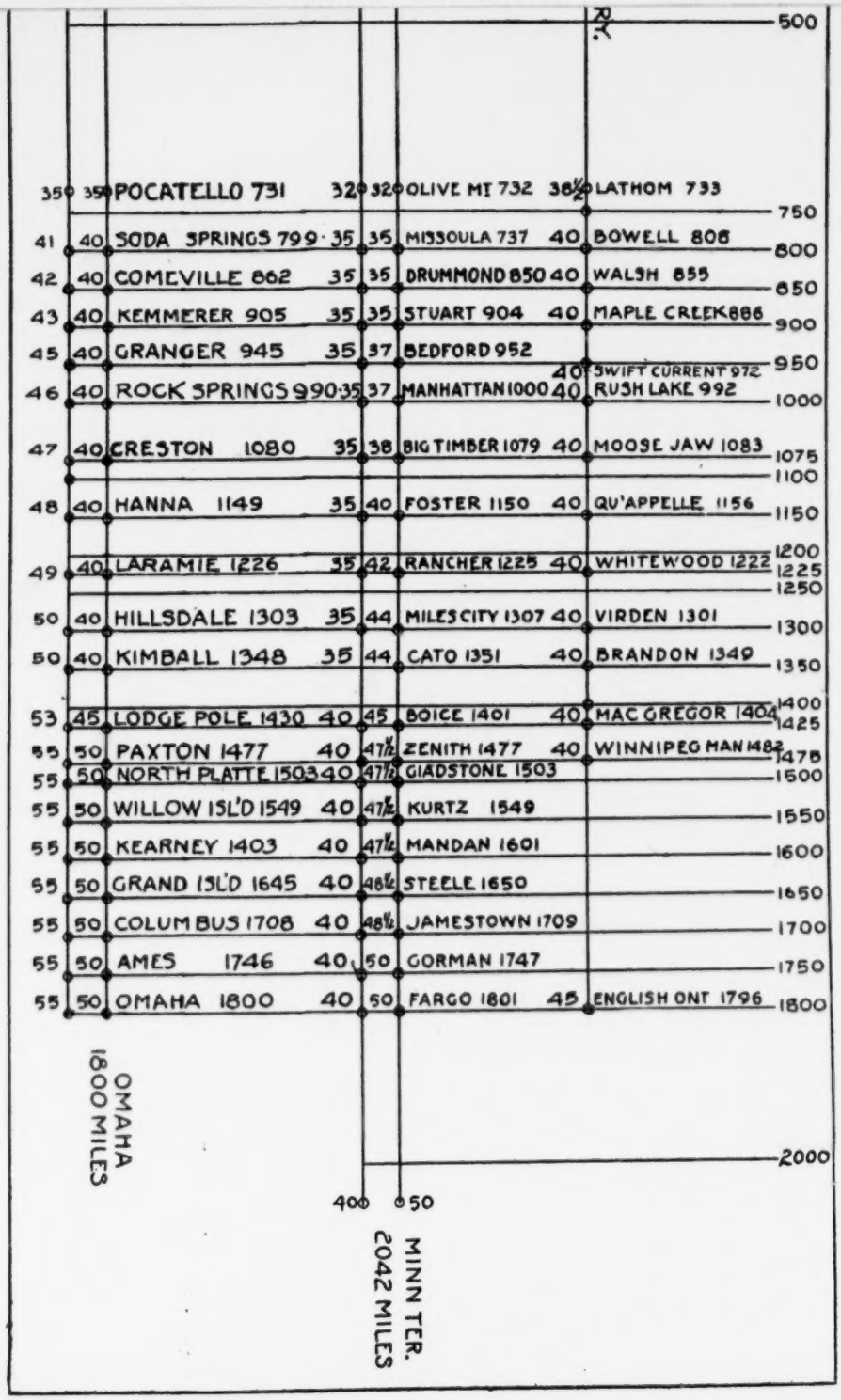
BUEHNER EXHIBIT No. 1.

CHART—Showing Relative Price of Yellow Fir Logs and Selling Price of Common Lumber Covering Years 1900 to 1907, inclusive.



Oregon & Washington Lumber Manufacturers' Association et al.,
vs.
Union Pacific Railroad Company et al.


COMPARATIVE STATEMENT OF
FIR LUMBER RATES ON MAIN
LINE OF ROADS AS INDICATED
OLD RATES REPRESENT PRIOR
TO NOV. 1ST 1907
NEW RATES REPRESENT
SUBSEQUENT TO NOV 1ST 1907
VANCOUVER B.C.
250
500
EXISTING RATES
(NO ADVANCE)
CANADIAN PACIFIC RY.
PORTLAND
NP NEW RATES
NORTHERN PACIFIC
OLD RATES
NORTHERN PACIFIC
PORTLAND
HUNTINGTON
OR & N CO
OSLRR
UPRR
UP OLD RATES
OR & N CO
OSLRR
UPRR
NEW RATES



BUEHNER EXHIBIT No. 2.

Cross-Examination.

I think we ran night and day close onto five years, and did not shut down during that period at all excepting as I have said, a few months in 1903, or 1904. We shut down then on our night run, but that was only for a few months. It was shut down while I was away, my partner shut it down, and it was shut down to add some little additions, but we could have run the mill before I left Portland. In fact it was started up on one Monday when I was there, but we shut down again. We shut down three days and then remained shut down.

Taking the year 1906, in Oregon, Washington and Utah, we sold 14,000,000 feet of our product. In Kansas, Nebraska, Colorado, and Eastern Missouri, ten millions. And then there is railroad material, sixteen million. That shows we shipped ten million feet out of twenty-four million feet by rail into the disputed or affected territory. This sixteen million feet of railroad material is not east of the Missouri river or into the affected territory. I don't know where that went. Our total output for the year was 100,000,000 feet. So, altogether about 10 per cent. of our business, and not over that, went to any point or place affected by any of these changes in rates. According to this statement, fourteen million, 14 per cent. in other words, went into the territory that is not affected and 10 per cent. into the territory that is affected. Thirty-four million five hundred thousand went by water, water shipment, and sixteen million five hundred thousand is railroad material, and then we did quite a little local business. That sixteen million feet of railroad material comes out of the one hundred million feet, but it did not go to this district that is affected by the change in rates.

We took an order of four and a half millions from the Southern Pacific Company in the fall of 1905, at $9.50, and I think that was increased a little afterwards, and I think probably one-half of that was shipped by water, and afterwards, another cargo was shipped by water. I know that. Probably a million and a half feet. That would probably make four million feet, as near as I can recollect, that went by water, and the rest of it went by rail. Not all Southern Pacific material. I think some was Union Pacific, and I think some was Short Line. I should say that one-third of the sixteen million went to the Oregon Short Line, the Union Pacific and O. R. & N. That is a guess, although I should say that at least a third went.

We shut down because we did not get a single order into this affected territory up to the day I left home. We did not shut down a one hundred million feet plant for the reason we were not getting orders from a district to which we ordinarily sold ten million feet a year. We were receiving very few orders from the territory that was not affected, that is Oregon, Washington and Idaho, and all other territory affected. The Coastwise movement was affected. The foreign business was affected. They knew of the change some time before we knew it. We have to meet competition and we tried very hard to get water business, foreign orders, and we got quite a bunch, but we had to take it very low. We shipped thirty-four million feet by water last year, and thirty-one million feet this year by water up to November 1st. I suppose we ship foreign fifteen or twenty millions and some years more than others. Prices dropped everywhere at the same time. At our mill they dropped about $2.50. All over the country.

I think Inman Paulsen cut more lumber than anybody else last year. His stuff goes to the same places that ours goes to.

To the question whether this sudden drop of about $2.00 a thousand was a cut made by the Portland lumber mills headed largely by the Inman Paulsen mill and myself, I should answer no and yes. Prices are something that the mills have very little control of, especially in a falling market. Mills have more to say as to prices on an upward market than they do on a falling market. On a downward market, we really have very little to say. We put in about half our logs, varying a little according to our cut for the year. The mill owns them. Owns its own timber. Right after the cut of $2.00 a thousand was made, the loggers cut their prices along the Columbia river—the logs dropped $1.00 in the month of July. Then they kept firm about at that same price, at $12.50, and then the next month they dropped $1.50; then they kept at $11.00 and then they dropped $1.50 the next month. In the month of August they went off $1.50 and then in September $1.50. Then they receovered in October half a dollar, and on the first of December again. The total drop was $4.00 up to the first of December. The lumber rate went up on our fir lumber, weighing from two thousand to thirty-three hundred pounds to the thousand, at the extreme point 10 cents a hundred. The advance in nearly all the territory was 10

cents; in some 5 cents. We shipped considerably more to the 10 cent territory. According to these figures here it is about six and three-quarters million feet to the 10 cent territory and about two and a third to the 5 cent territory. The price of lumber has dropped much more than the price of logs.

Well, I am satisfied that the drop in the price of lumber was caused primarily by the disturbance in the freight rate. The freight rate is such a large item in common lumber, it being propably three-fifths of the selling price of our common lumber, that it disturbs the conditions all around, when you change the freight rate. If you will notice that other big drop you will see it was caused by a change in the freight rates. That was way back in 1904. I did not realize that until I had made this plat up, had this chart prepared, and then I noticed it. That was a change in freight rates, and it had the same effect. When a change is made in the freight rate in the lumber business, it takes some time to readjust matters. Lumbermen cannot pile up any great amount of lumber, and they sacrifice their stock to get rid of it. The average weight of fir is 3300 a thousand. Some other lumber is a little heavier than that; that is green rough stuff and it decreases from that down to about 2,000 pounds for the higher kiln dried stuff, and some of it a little less than that.

On our business the advance in rates will run about $2.75 per thousand for averaging up all the cars. If the old rate should be restored, and it were understood that it should remain as it had been, I do not wish to be understood as saying that the price of lumber would go up $2.75 a thousand right away. There would be a readjustment until the other territory would probably readjust their prices. It would probably take a year or more until everything was readjusted. The buyers would hesitate to buy; they would have to make up their own minds that the prices were at their lowest marks. The price of lumber went down much more than the increase in the freight rate. The freight rate did not force it down. There was simply a disturbance there that caused the drop. If the old rate should be restored the prices certainly will not go up, but it will help matters. I mean to say the prices will not go back to where they were right away, but to restore the freight rate would help matters very much. That would tend to bring the prices back.

Yellow fir logs, according to the information given by our secretary, are selling at about $9.00 in Portland, including

towage of 50 cents a thousand. At that price the logger certainly will not make any profit if he has to pay the same price he did last year on his supplies and his labor, unless he puts the stumpage on at less than the stumpage is worth today. Yellow fir stumpage on the Columbia river today is worth about $3.00 choice, and red fir would be down about $1.50. Our yellow fir will average up probably more than a dollar. Without any interest charges or anything like that, about $1.08, or $1.12. We pay $2.00 for some. Some loggers have paid $2.50 for the stumpage. It cost last year to put logs into the Columbia river $5.34 a thousand, and 50 cents more for towage. $5.84 took the tree and delivered it to our mill. That is just the cost as to labor. Labor lines and keeping up the track, to which we must add the stumpage.

These logs are selling on the Columbia river today for $9.50 a thousand. There is an item of cost which has to be written off, because after your timber is taken out you have the large plant on hand, a railway on hand which either has to be abandoned or something done with it, and that is quite a large item. In one camp we charged $1.00 a thousand. The laying of some of our logging roads over a rough country has amounted to a cost of $12,000 to $15,000 a mile. In some cases it is difficult work and it costs that much.

I think it was February or January when the price advanced. It was only for about three months that the price was up that high. It was just a peak up there, and after that, after those few months—I will have to explain that. In the winter our logging is shut down, on account of the severe weather we have out there, and unless a mill buys a large quantity of logs in the fall it will run out of logs in February and March. There is nearly always a shortage in February and March, and it is necessary to buy enough logs to carry us over into May or June.

In 1900 we paid about $6.00 for logs, I think. For about two years it ran pretty uniform, and it ran 50 cents for towage. I suppose we could have bought stumpage for 75 cents to $1.00 in those days. The price of labor in those days was probably in actual effect, about one-half the price of last year.

This price of logs we are talking about, the logs were put in before the drop came. I know the price of labor has dropped. It has dropped probably 50 cents a day for com-

mon labor, and in our camps if we run we will probably cut the price of common labor 50 cents a day. We know that; that would be what we would do the first of next month, if we ran.

In 1902 the price of logs I think was $6.00. The highest price in 1906 that we paid was $13.50, I think, although I heard that there were some logs that sold for $14.50. $12.50 is the highest for 1906. I was referring to 1907. That was when the prices were so high. From 1902 to 1906 logs increased $6.00 a thousand feet, but that increase was not gradual. It was simply a sudden rise in the first part of 1906. Prior to the San Francisco fire, from 1902 to 1905, there was a raise of $3.00 per thousand in the price of logs; that was a gradual rise there from 1905, I think. And there was a rise in the price of labor and material also to the mills, as well as to everybody else, and a little rise in the price of lumber, I think. We always cut more than forty-six million feet. We had cut one hundred and twenty million feet before our fire.

Our first section there on the chart shows a production from August to December, only about five months.

In 1903 we cut 80,000,000 feet; in 1904 we cut 75,000,000 feet; in 1905 we cut 85,000,000 feet, and in 1906 we cut 100,000,000 feet; and in 1907, up to November, we cut 74,000,000 feet, dropping off all but the round figures. Our production was increasing, the price of logs was increasing, and the price of labor was increasing at the same time, but not exactly irrespective of the San Francisco fire. The price dropped in 1904, and the price of lumber dropped more, until we were selling, for several months, for one-half a dollar less than the logs cost us. That was in 1904 and 1905. Then the price of lumber gradually increased from 1905 until the peak was reached in 1907.

The price of lumber, like everything else, depends absolutely upon the demand; and the price of logs, in a limited territory, like the Columbia river, fluctuates more than the price of lumber will fluctuate, because our lumber is distributed over a greater area of territory.

On the present price of stumpage, allowing $3.00 a thousand feet now, as against $1.00 in 1902 and 1903, I do not think loggers can sell logs in the Columbia river for $9.50 and make a profit. The price I gave you for putting logs into the Columbia river was the cost of labor lines and re-

pairs, and your stumpage is all right, but you must take depreciation into account. I think that would safely be $1.00 a thousand.

The way we manufacture and the logs we put in, we get a fair over-run, varying from 12 to 25 per cent. Probably it would be an average of 18 to 25 per cent. That is largely due to the quality of our timber. We have extra fine timber, and I think I can say, without any braggadacio, that we have the finest timber on the Pacific Coast. We have been told that by people that ought to know. We save all our small pieces, because they are clear, and we make a pretty good gain on our logs. From 12-1/2 per cent. up to 20 per cent., I should say; probably 18 per cent. would be a fair average of the over-run. That applies largely the character of logs I am speaking of to the timber owned by myself.

By this change we are losing a whole lot of money by not running the mill. We are getting $6,000 a month for our refuse, sawdust and fuel, and our fixed expenses are over $600 a day. My partner closed down November 14th.

The decline was quicker than it is shown on that chart, because we had some old orders which held up the average selling price. In that respect that blueprint is not exactly right, but I can explain it. I think that was in the months of August and September. No. I would correct that: that break occurred in June. I should have said June. I do not think I spoke of a decline in October. There was a gradual decline from June, when the first disturbance occurred. It cost us $3.16 to $4.47 to saw lumber. The way we keep our books this is labor and ordinary supplies and ordinary depreciation for manufacturing and for handling the lumber, not considering anything for the plant or for the investment. I think that includes office expenses, yard expenses, and insurance and depreciation of plant. On the logging camp the depreciation should be $1.00 a thousand. On our mill it is not as much as that. In making the estimate of $4.47 for sawing the lumber I have allowed for depreciation of plant from 4-1/2 to 15 per cent., depending upon the nature of the plant and what it is. We figure that a mill will not last more than ten years. Our western mill lasted seven years and it was burned down.

In 1906 our logs ran rather long, they averaged 36 feet to the log, and if I recollect the average scale was twenty-six hundred and odd feet to the log. The larger the log is the

more good lumber you can get out of it, provided it is a sound log. One log which would produce 3,000 feet would be worth, by economy in handling and otherwise, much more to the manufacturer than five, six or eight logs producing the same amount of lumber. In a log of 2,000 feet the proportion is the same. There is, however, a medium sized log, if you get beyond that it is very expensive and it is the same way with a small log, that is more expensive. The medium sized log is the best. If you get 2,000 feet out of one log and 2,000 feet out of five logs, you have gotten the 2,000 feet out of the one log at much cheaper cost of production than you have gotten the 2,000 feet out of the five logs, and have got a much better grade of lumber.

The price of common lumber appears on the chart. Common usually runs above the price of the logs, but for a few months it was less. I would say this. That is simply the average of the business. For instance, we sold the Southern Pacific Road, as I told you, a million feet of lumber, at four and five dollars less than we paid for the logs; but at the same time we were manufacturing lumber at a higher price, to make up the average. So this is all average of the total shipments, which is the fair basis to consider. That is the average of common. That is the base price. We sold our selects and clears and other first class stuff at the same time for prices that varied. We have long lengths and fine timber that we have gotten sixty dollars for, but those were all special jaks, and that does not amount to much. The base price is the price of common lumber. Of course it depends on the grades and sizes, that fine quality lumber is only a small quantity of the total. We figure we get from 26 to 28 per cent. No. 2 and better. The price of that varies very much. I suppose $10.00 for common. I suppose that when common is selling for $10.00 we would get $20.00 for No. 2 and $27.00 for No. 1, and for extra fine No. 1, different sizes, probably $30.00.

The greatest number of the mills in Portland and on the Columbia river buy their logs, but the larger mills are beginning to operate their own camps.

Complainants offered in evidence "General Exhibit B," as follows:

UNION PACIFIC SYSTEM.

TRAFFIC STATISTICS.

Part of the figures cover 1900 and others 1902, being date of first issue of combined reports.

	1900.	1906.	1907.
Mileage operated	5,325.68	5,403.55	5,610
Gross earnings	$32,631,769	$67,281,543	$76,040,726
Average train load	367.42	509.71	.....
Average tons freight per loaded car	19.49	21.54	.....
Average distance of haul of one ton	363.72	410.27	.....
Average receipts per ton per mile	.098	.091	.....
Freight earnings per mile of road	5,950.87	9,066.63	.....
Earnings per freight train mile	3.31	3.84	.....
Tons carried one mile per mile of road	751,097	1,203,174	.....
Percentage of empty cars in train	29.04	25.20	.....

Products of forest, tons—U. P., 255,209–5.24%, 697,091–8.30%, 694,858–7.8%.
Products of forest, tons—O. S. L., 286,489–12.41%, 709,973–15.13%, 741,271–14.43%.
Products of forest, tons—O. R. & N. Co., 504,228–33.48%, 920,375–28.56%, 1,041,262–30.25%.

As the O. R. & N. Co. handles a larger percentage of lumber than any of the other roads forming the Union Pacific System, it is of interest to note its empty car haul as compared with the entire system.

PERCENTAGE OF EMPTY CAR MOVEMENT O. R. & N. CO.

	1900.	1906.	1907.
Percentage of empty cars in trains	23.58	20.51	18.76

As a matter of fact, it has a lower percentage of empties and the percentage has increased with the increase of the lumber traffic.

Southern Pacific Railway Company and its Proprietary Companies.

TRAFFIC STATISTICS.

	1900.	1906.
Mileage operated	7,545.17	9,191.56
Gross earnings	$63,920,414	$105,632,550
Average train load	295.30	383.07
Average tons freight per loaded car	17	19.78
Average distance of haul of one ton	307.51	262.31
Average receipts per ton per mile	.957	1.025
Freight earnings per mile of road	5,296.97	6,734.36
Earnings per freight train mile	2.51	3.29
Tons carried one mile per mile of road	621,424	784,590
Percentage of empty cars in train	27.04	28.47
Products of forests, tons	2,252,676 14.77%	4,571,491 20.36%

Northern Pacific Railway Co.

TRAFFIC STATISTICS.

	1900.	1906.	1907.
Mileage operated	4,714.19	5,401.14	5,443.67
Gross earnings	$30,021,317	$61,223,476	$68,419,762
Average train load	317.67	400.47	406.77
Average tons freight per loaded car	13.42	17.30	17.78
Average distance of haul of one ton	309.66	341.57	328.79
Average receipts per ton per mile	.1047	.0832	.0866
Freight earnings per mile of road	4,628.50	8,075.37	8,798.33
Earnings per freight train mile	3.14	3.33	3.53
Tons carried one mile per mile of road	467,804	971,139	1,011,164
Percentage of empty cars in train	27.23	26.99	21.08
Products of forests, tons	2,207,526 31%	5,961,617 38.82%	6,257,557 37.38%

GREAT NORTHERN RAILWAY CO.
(Not including Proprietary Companies.)

TRAFFIC STATISTICS.

	1900.	1906.	1907.
Mileage operated	4,085.10	5,150.56	5,226.48
Gross earnings	$22,005,710	$46,368,411	$50,208,035
Average train load	321	544.71	561.55
Average tons freight per loaded car	14.30	19.57	20
Average receipts per ton per mile	.0966	.0778	.0755
Freight earnings per mile of road	4,077.04	6,783.97	7,121.97
Earnings per freight train mile	3.10	4.244	4.247
Tons carried one mile per mile of road	421,699	870,697	941,512
Percentage of empty cars in train	22.51	28.18	24.05
Products of forests, tons.	1,079,155	2,789,306	2,699,324
	20.85%	17.33%	14.80%

CHICAGO, BURLINGTON & QUINCY.

TRAFFIC STATISTICS.

	1900.	1906.	1907.
Mileage operated	6,310.47	8,608.26	8,863.40
Gross earnings	$38,032,911	$72,803,349	$81,705,307
Average train load	195.26	370.38	394.06
Average tons freight per loaded car	12.12	16.53	17.55
Average distance of haul of one ton	195.70	271.52	283.71
Average receipts per ton per mile	.0877	.0804	.0787
Freight earnings per mile of road	4,193.38	5,900.47	6,325.54
Earnings per freight train mile	1.71	2.98	3.10
Tons carried one mile per mile of road	477,367	731,306	802,722
Percentage of empty cars in train	27.22	30.92	26.58

Chicago & Northwestern Railway Co.

TRAFFIC STATISTICS.

	1900	1906	1907
Mileage operated	5,246.19	7,482.77	7,550.64
Gross earnings	$43,390,994	$63,481,577	$68,878,931
Average train load	254.61	285.91	271.37
Average tons freight per loaded car	14.65	16.07	16
Average distance of haul of one ton	150.74	144.07	144.46
Average receipts per ton per mile	.0837	.0888	.0904
Freight earnings per mile of road	6,154.40	6,185.56	6,535.69
Earnings per freight train mile	2.13	2.54	2.46
Tons carried one mile per mile of road	734,849	694,068	718,982
Percentage of empty cars in train	26.72	30.25	29.92
Products of Forests, tons.	3,709,608	5,433,941	5,570,386
	14½%	15.18%	14.82%

EMPTY CAR MOVEMENT.

Pacific Coast Group.

	1906	1907
Great Northern	28.18%	24.05%
Northern Pacific	26.99%	21.08%
Union Pacific	25.03%	24.88%
Southern Pacific	26.78%	26.43%
Atchison, Topeka & Santa Fe	27.52%	26.59%

EMPTY CAR MOVEMENT.

Middle States and Eastern Group.

	1906	1907
St. L. & S. F	27.86%	30.08%
C. R. I. & P	31.00%	26.95%
C. & N. W	30.25%	29.92%
C. M. & St. P	28.55%	27.59%
C. B. & Q	30.92%	26.58%
N. Y. Central	33.48%	32.50%
Illinois Central	26.20%	24.61%
Penn	36.75%	36.58%
B. & O	34.95%	33.19%
Seaboard Air Line	29.94%	29.08%

Northern Pacific Railway Co.

FINANCIAL STATISTICS.

Taken from Report of Stockholders, June 30th, 1897.

COST OF ESTATE.

"Upon September 1, 1896, the Northern Pacific Railway Company entered into possession of the Railroads, Lands and appurtenant property that has been purchased at foreclosure sales.

In exchange for the property thus acquired, and unified in the present Northern Pacific System, the Railway Company issued

$155,000,000 of Capital Stock and
129,816,500 of Mortgage Dept.

$284,816,500 total issue as of September 1, 1896, and since has received from Messrs. J. P. Morgan & Co., as Reorganization Managers

$ 3,674,913.20 in Cash, and
1,325,086.80 in $2,210,000 General Lien Bonds at about 60 constituting the
$ 5,000,000.00 Betterment and Enlargement fund,
10,500.00 Prior Lien Bonds,
440,000.00 General Lien Bonds,
4,086,300.00 Preferred Stock, and
2,500,000.00 Common Stock;

of which securities all are now held as a part of the treasury assets of this Company, and upon September 1, 1897 (including the cash received), had a cash market value of $ 7,767,723.20."

Northern Pacific Railway Co.

Capital Stock.	1897	1907
Preferred	$ 75,000,000	Retired.
Common	80,000,000	$169,721,100
Mortgage debt	130,812,500	281,530,500
Bonds of other companies assumed	25,570,000	12,785,876
	$311,382,500	$464,037,476

Northern Pacific Railway Co.

Year ending June 30	1900	1906	1907
Mileage	4,714.19	5,401.14	5,433.67
Gross earnings	30,021,317	61,223,476	68,419,762
Net earnings	15,626,689	30,028,043	33,519,762
Earnings per mile of road	6,368	11,335	12,570
Operating expenses to earnings	47.90	50.80	51
Dividends paid:			
Preferred Stock	4%	Retired	Retired
Common stock	3%	7%	7%
Net Surplus for year	$ 1,083,818	$ 5,555,760	$12,623,929
Total Surplus	2,504,804	19,936,979	44,595,708

	1900	1906	1907
App. from earnings for betterments, June 30, '99-June 30, '06		20,011,285	
Maintenance of way and structures, '97-'07, charged to operating expenses			64,036,807
Maintenance of equipment, same period			37,547,585
Appropriated for depreciation of equipment			5,926,753
Additions and betterments prior to June 30, '06, transferred to capital			18,162,597

This item accounts for the large increase in total surplus shown in 1907.

GREAT NORTHERN RAILWAY CO. AND PROPRIETARY COMPANIES.

FINANCIAL STATISTICS.

	1900	1907
Capital stock outstanding	$98,882,700	$184,531,712
Funded debt	96,577,454	207,517,939
Car trust notes	176,242	
	$195,636,396	$392,049,651

GREAT NORTHERN RAILWAY CO.

Year ending June 30,	1900	1906	1907
Mileage	5,075.86	5,907.39	5,982.31
Gross earnings	28,910,799	51,276,280	55,144,402
Net earnings	14,033,211	25,423,357	22,581,626
Earnings per mile of road	5,965	8,681	9,217
Operating expenses to earnings	51.46	50.42	59.05
Dividends paid, per cent	7	7	7
Maintenance of way and structures 1900-1907, charged to operating expenses			38,567,586
Maintenance of equipment, same period			24,555,987
Net Surplus for year	2,217,763	5,184,569	4,436,142
Total surplus	2,684,240	23,593,165	28,029,307
Charged to fund for "Replacement of Equipment"			3,083,836.51
Charged to "Fund for permanent Improvement and Renewals"			2,000,000

	1900	1906	1907
Charged to "Fund Cost of Improvements to St. P., M. & M. R. Co."			4,036,434.76

CONTINGENT LIABILITIES.

Cost of additions and improvements made by the Great Northern Railway Co. to property leased from the St. P. M. & M. Ry. Co., and paid for from "Fund for Permanent Improvements and Renewal"	$15,648,150.81
Unexpended balance of "Fund for Permanent Improvements and Renewals"	4,879,612.31
Fund for replacement of equipment	6,997,810.25
Insurance fund	444,410.69
Surplus fund of proprietary companies deposited with the Great Northern Ry. Co	9,878,581.46
	$37,848,565.52

CHICAGO, BURLINGTON & QUINCY.

FINANCIAL STATISTICS.

	1900	1907
Capital stock	$ 98,447,500	$110,839,100
Funded debt	134,174,100	168,690,000
	$222,621,600	$279,529,000
Sinking fund	20,375,366	27,590,565
Renewal fund	10,000,000	10,000,000

Year ending June 30,	1900	1906	1907
Mileage	7,545.78	8,896	9,134
Gross earnings	47,535,420	74,146,761	82,473,250
Net earnings	16,133,079	20,638,761	20,729,464
Earnings per mile of road	6,299.60	8,334	9,041.14
Operating expenses to earnings	62.73	69.41	71.4
Dividends paid, per cent	6	7	7
Net surplus for year	2,099,084	3,907,572	4,320,333
Total surplus	15,722,392	41,649,537	47,033,299
Maintenance of way and structures, 1900 to 1907, charged to operating expenses			73,826,489
Expended per year		11,312,712	14,445,867
Maintenance of equipment, same period			73,121,327
Expended per year		13,639,942	14,725,632

UNION PACIFIC RAILROAD CO. AND AUXILIARY COMPANIES.

FINANCIAL STATISTICS.

Capital Stock:	1898	1906
Common	$ 61,000,000	
Preferred	75,000,000	
	$136,000,000	$357,701,200
Funded debt	95,000,000	278,683,000
	$231,000,000	$636,384,200

UNION PACIFIC RAILROAD CO. AND AUXILIARY COMPANIES.

Year ending June 30:	1900	1906	1907
Mileage	5,710.91	5,403.55	5,610
Gross earnings	47,500,279	67,281,542	76,040,726
Net earnings	23,359,927	32,055,066	35,465,838
Earnings per mile of road	8,166	12,376	13,554
Operating expenses to earnings	50.92	52.07	.....
Dividends paid:			
Preferred stock	4%	4 %	4%
Common stock	5½%	8%	10%
Net surplus for year	21,361,691	42,796,026	53,649,189
App. from earnings and expended for betterments and other improvements, June 30, 1899, to June 30, 1906	.....	19,885,775	.....
Maintenance of way and structures, 1902 to 1906, charged to operating expenses	.....	34,980,962	.....
Maintenance of equipment, same period	.....	30,708,505	.....

"The receipts for the year were the largest in the history of the Companies since their re-organization in 1898. Excluding the $10,329,815.60 income from investments, and dealing only with the transportation operations, they compare with those of the year 1898 as follows:

Year ended	Miles of Road Operated	Gross transportation Receipts	Operating Expenses and Taxes	Receipts over Operating Expenses and Taxes
June 30, 1906	5,403.55	$67,281,542.60	$36,963,773.16	$30,317,769.44
June 30, 1898	5,325.68	32,631,709	19,580,290.89	13,051,478.16
Increase	77.87	$34,649,773.55	$17,383,482.27	$17,266,291.28
Per cent	1.46	106.18	88.78	132.29

"The operating expenses for the year were charged with $2,206,610.39, which sum was credited to a reserve fund for future maintenance, renewals, etc. The credit to this fund is now $4,774,610.39, which for the present is ample, considering the improved physical condition of the properties, to permit a discontinuance of further charges to operating expenses for reserve. The surplus from transportation operations available for distribtuion will therefore be greater by the amount of the annual deduction for this reserve fund. There is also a credit of $4,678,350.93 to a reserve fund for betterments, additions and new equipment, which makes a total credit to reserve funds of $9,452,961.32."

SOUTHERN PACIFIC COMPANY.
(Not including Proprietary Companies.)

FINANCIAL STATISTICS.

Capital Stock:	1900	1906	1907
Common		$197,849,258	.....
Preferred	$197,832,148	39,569,840	.....
Bonded debt	31,176,500	39,200,500	.....
	$229,008,648	$276,619,598	.....
Total funded debt Southern Pacific Company and Proprietary Companies	$ 19,914,106	$371,425,321	.....

SOUTHERN PACIFIC PROPRIETARY COMPANIES.

	1906
Capital stock	$309,770,572.00
Preferred stock	25,200,000.00
Funded and other fixed interest-bearing debt	323,989,006.97
Equipment trust obligation	2,850,000.00
3% Notes to U. S. of America	17,643,814.68
	$679,453,393.65

SOUTHERN PACIFIC CO., INCLUDING PROPRIETARY COMPANIES.

Year.	1900	1906	1907
Mileage operated	7,545.17	9,191.56	9,423
Gross earnings	$63,920,414	$105,632,549	$124,864,440
Net earnings	22,511,614	37,511,656	42,285,533
Earnings per mile of road	8,106.66	10,784.42	13,251
Operating expenses to earnings	64.78	64.49	66.1
Dividends paid:			
Common stock		5	6
Preferred stock		7	7

	1900	1906	1907
Net surplus for year	7,253,420	11,118,837	.....
Total surplus	43,731,797	82,665,869	.....
Maintenance of way and structures June 30, 1900, to June 30, 1906		85,970,369	.....
Maintenance of equipment, same period		73,636,937	.....

CHICAGO, BURLINGTON & QUINCY R. R. Co.

Quotations from "American Railways as Investments," by Carl Snyder (pp. 189, 193, 197):

On June 30th, 1907, the capital account stood as follows:

Capital stock	$110,839,100
Funded debt	174,172,000
Total capital	$285,011,100
Securities held (inc. am't with S. F. Trust)	25,879,630
Approximate net capital	$259,131,470

Approximate net capital per mile	$29,128
Average miles operated	8,896
Net earnings on net capitalization	8.7%
Stock on net capitalization	42%
Fixed charges on Total Net Income	45%
Factor of Safety	55%

"In 1906 the actual surplus of the road (a considerable part being concealed in maintenance) was undoubtedly about $18,000,000, equivalent to more than 17% on the capital stock. It was sufficient to pay the full interest on the collateral trust bonds and leave an outstanding equity for the two proprietary roads of perhaps four or five million dollars. This is certainly a very remarkable showing."

"A peculiarity of the Burlington in the large amount held by the trustees of the sinking funds, which have not been usually considered in the capital estimates of other roads because of the general smallness of the items. To the close of the fiscal year of 1906, the Burlington had paid into its sinking funds nearly $26,000,000.

"Nominally the undistributed surplus remaining after all charges, the payment of 7% dividends on the three millions of outstanding stock not deposited under the bonds, and the interest on the joint collateral bonds, amounted in 1906 to $3,907,572. The same item for the years since the purchase of the roads by the Hill interests are shown in the tables or surplus earnings."

"If, however, $5,300,000 were added to the nominal net surplus shown in 1906, the equity remaining for the two proprietary roads would be in excess of $9,000,000. It could be conservatively estimated at least half this or over $2,000,000 for each road."

IMPROVEMENTS FROM EARNINGS.

"With the Northern Pacific, as with so many other roads, however, the maintenance charges represent only a part of the actual amount expended in the maintenance and improvement of the road. In addition to the charges shown, the following sums since the reorganization have been appropriated from earnings for betterments:

1897–8	$ 811,709
1898–9	2,176,619
1899–0	3,000,000
1900–1	2,011,285
1901–2	3,000,000
1902–3	3,000,000
1903–4	3,000,000
1904–5	3,000,000
1905–6	6,081,980
Total	$26,081,593

"This is a solid sum, and the appropriations in 1906 were especially heavy. In 1906, in addition to the $3,000,000 regularly set aside for some years for betterments, $2,000,000 was written off on account of the depreciation of equipment, and $1,081,980 was diverted from the earnings for insurance fund.

"Since 1900 these special appropriations total over $20,000,000, which stands for example against similar appropriations in the same period of $18,057,700 for the Atchison, and $15,130,910 for the Great Northern, and nothing at all on the Burlington."

"The surplus of 1906 was sufficient to pay the regular 7% dividend on the stock, set aside $3,000,000 for betterments, charge off $2,000,000 for depreciation of equipment, turn $1,081,000 into the insurance funds, and carry $5,500,000 to the credit of profit and loss for the operations of the year."

LEW ANDERSON:

Anderson Exhibit 25-A; Record, 542, which I prepared.

ANDERSON EXHIBIT No. 25-A.

Florida, Georgia, Mississippi,	Yellow Pine.
vs.	
Eugene, Ore. Albany, Ore.	Fir Lumber.

COMPARATIVE STATEMENT.

Showing distances and rates on yellow pine lumber in cents per hundred pounds and per ton per mile from three points in Georgia, one in Florida, and two in Mississippi, to Chicago, as compared with fir lumber in cents per hundred pounds and per ton per mile from Eugene and Albany, Oregon, to Chicago, via Portland, Oregon, and what is known as the Harriman lines. Also to points same distance from Albany and Eugene that Chicago is from the yellow pine points. The short line mileages have in each instance been used.

Comparison shows that although the Harriman lines enjoy a haul from 1,309 to 1,562 miles in excess of the Southern lines—or, to state it in another way, a haul represented by the distance from Rawlins, Wyoming, and Pocatello, Idaho, to Chicago, yet the Harriman lines rate per ton per mile on Chicago shipments ranges from one and ninety-five hundredths mills less to seventeen hundredths mills more than the rate per ton per mile enjoyed by lines from the yellow pine district.

The yellow pine shipping points shown in this statement are among those set forth by Mr. Compton, the railroad company's representative appearing in what is commonly known as the Tifft case. The points as stated by Mr. Compton, in his exhibit of Chicago rates, are fairly representative points of origin, likewise are the Mississippi points, as is indicated by reparation claim I. C. C. No. 67, filed with this Commission by George T. Mickle Lumber Company of Chicago.

Basis of comparison, Gulf and Ship Island R. R. Co. Lumber Tariff S-357, I. C. C. No. 130–4/15/03–So. Ry. I. C. C. 9265–3/14/05; Trans-Continental Freight Bureau I. C. C. No. 564–4/15/05, and I. C. C. No. 850–11/1/07.

EQUAL DISTANCE AND TO CHICAGO FROM EACH.

From	Route	To	Dist.	Rate in cents per 100 lbs.	Rate in cents per ton mile.	From	Dist.	Basis	Rate in cents per 100 lbs.	Rate in cents per ton mile.	Miles.	Difference mills per ton.	Favor of
Argyle, Ga.....	Evsv.	Chicago, Ill...	1013	27	.00533	Albany	2372	Old	50	.00422	1359	.00111	A. C. Line
A. C. Line						to							
						Chicago		New	60	.00506		.00027	A.C.Line
				Old									
Albany, Ore....	Hunt.	Opal, Wyo....	1000	40	.00800	Eugene	2416	Old	50	.00414	1403	.00119	A.C.Line
S. P. Co.				New		to							
				44	.00880	Chicago		New	60	.00497		.00036	A.C.Line
				Old									
Eugene, Ore....	Hunt.	Fossil, Wyo...	1019	40	.00785								
S. P. Co.				New									
				42	.00824								
Lulaton, Ga....	Evsv.	Chicago, Ill...	1022	27	.00528	Albany	2372	Old	50	.00422	1350	.00106	A.C.Line
A. C. Line						to							
						Chicago		New	60	.00506		.00022	A.C.Line
				Old									
Albany, Ore....	Hunt.	Granger.....	1025	40	.00780	Eugene	2416	Old	50	.00414	1394	.00114	A.C.Line
S. P. Co.				New		to							
				45	.00878	Chicago		New	60	.00497		.00031	A.C.Line
				Old									
Eugene, Ore....	Hunt.	Fossil, Wyo...	1019	40	.00785								
				New									
				42	.00824								

EQUAL DISTANCE AND TO CHICAGO FROM EACH.

From	Route	To	Dist.	Rate in cents per 100 lbs.	Rate in cents per ton mile.	From	Dist.	Basis	Rate in cents per 100 lbs.	Rate in cents per ton mile.	Miles.	Difference mills per ton.	Favor of
Jacksonville, Florida..... A. C. Line	Evsv.	Chicago, Ill...	1063	26	.00489	Albany to Chicago	2372	Old	50	.00422	1309	.00067	A.C.Line
								New	60	.00506		.00017	S.P.Co.
Albany, Ore.... S. P. Co.	Hunt.	Green River, Wyo.....	1055	Old 40	.00758	Eugene to Chicago	2416	Old	50	.00414	1353	.00075	A.C.Line
				New 45	.00853			New	60	.00497		.00008	S. P. Co.
Eugene, Ore.... S. P. Co.	Hunt.	Granger, Wyo.	1069	Old 40	.00748								
				New 45	.00824								
Hague, Fla..... A. C. Line	Evsv.	Chicago, Ill....	1089	29	.00533	Albany to Chicago	2372	Old	50	.00422	1283	.00111	A.C.Line
								New	60	.00506		.00027	A.C.Line
Albany, Ore. .. S. P. Co.	Hunt.	Point of Rocks, Wyo.....	1095	Old 40	.00731	Eugene to Chicago	2416	Old	50	.00414	1327	.00119	A.C.Line
				New 46	.00840			New	60	.00497		.00036	A.C.Line
Eugene, Ore.... S. P. Co.	Hunt.	Green River, Wyo.....	1099	Old 40	.00728								
				New 45	.00819								

EQUAL DISTANCE AND TO CHICAGO FROM EACH.

From	Route	To	Dist.	Rate in cents		From	Dist.	Basis	Rate in cents		Miles.	Difference mills per ton.	Favor of
				per 100 lbs.	per ton mile.				per 100 lbs.	per ton mile.			
Laurel, Miss.... G. & S. I. Ry.	St. L.	Chicago, Ill...	854	26	.00609	Albany to Chicago	2372	Old	50	.00422	1518	.00187	G.& S.I.
								New	60	.00506		.00103	G.& S.I.
Albany, Ore.... S. P. Co.	Hunt.	Lava, Idaho...	848	Old 40	.00944	Eugene to Chicago	2416	Old	50	.00414	1562	.00195	G.& S.I.
				New 40	.00944			New	60	.00497		.00112	G.& S.I.
Eugene, Ore.... S. P. Co.	Hunt.	Pocatello, Ida.	855	Old 40	.00936								
				New	.00936								
Lumberton, Miss G. & S.I.Ry.	St.L.	Chicago, Ill...	811	26	.00609	Albany to Chicago	2372	Old	50	.00422	1501	.00187	G.& S.I.
								New	60	.00506		.00103	G.& S.I.
Albany, Ore.... S. P. Co.	Hunt.	Bancroft, Ida..	879	Old 40	.00910	Eugene to Chicago	2416	Old	50	.00414	1545	.00195	G.& S.I.
				New 40	.00910			New	60	.00497		.00112	G.& S.I.
Eugene, Ore.... S. P. Co.	Hunt.	McCammon, Ida.	874	Old 40	.00915								
				New 40	.00915								

It is a comparative statement from points in Florida, Georgia and Mississipi, and from Eugene, Oregon, and Albany, Oregon, in the Willamette Valley, made up in two ways, to Chicago, Illinois; first, the rate per ton per mile from those points in the south to Chicago, the rates from those points in the west to Chicago, and the rate per ton per mile on the rates as charged to the West for a like distance going east, that is out points in Colorado, Idaho, or wherever it would reach. It is taken from the official report of the Tift case, and also from claims No. 67 in the Yellow Pine case. The rates are from tariffs on file, current tariffs. I have compiled the rates myself, but I have used Mr. Compton's mileages and his points of origin and his destinations.

Anderson Exhibit No. 26, record, 545, is a table prepared by me. It shows equal mileage per ton per mile and also in cents per 100 pounds as well as rates from the west to three points mentioned, and from the yellow pine district to three points mentioned.

ANDERSON EXHIBIT No. 26.

Louisiana, Texas } Yellow Pine.

vs.

Albany, Ore., Eugene, Ore. } Fir Lumber.

COMPARATIVE STATEMENT.

Showing distances and rates on Yellow Pine Lumber in cents per 100 lbs. and per ton per mile from two points located in the center or midst of the Yellow Pine section of Louisiana and Texas, to

DENVER, OMAHA AND KANSAS CITY,

as compared with Fir Lumber rates in cents per 100 lbs. and per ton per mile, from Eugene and Albany, Ore., to the same points; a so to points same distance from Albany and Eugene that Denver, Omaha and Kansas City are from Yellow Pine points.

Comparison on Denver shows that although the rail haul from Oregon points is from 184 to 362 miles greater than haul from Yellow Pine District, yet the rate per ton per mile on the Oregon shipments is from 74/100 mills to 1-33/100 mills greater than the rate on Louisiana and Texas shipments to Denver.

Comparison on Omaha shows that although the haul enjoyed by the Oregon Lines is from 965 to 1,072 miles or distance from Oregon, Utah, to Omaha, in excess of Southern Lines haul, yet the rate per ton per mile on the Oregon shipments is from 11/100 mills to 82/100 mills greater than the rate on Omaha shipments from Louisiana and Texas points.

Comparison on Kansas City shows that although the haul enjoyed by the Oregon Lines is from 1,391 to 1,590 miles, or distance from Granger, Wyo., and Pocatello, Idaho, to Chicago, in excess of Southern Lines haul, yet the rate per ton per mile on the Oregon shipments is but from 1-18/100 mills to 3-11/100 mills less than the Southern Lines excessive rate of 6 and 8 mills.

Comparison on equal mileage basis shows that Oregon Lines rate per ton per mile is from 96/100 mills to 6-13/100 mills higher than the Southern Lines.

Basis of comparison is Kansas City Southern Tariff No. 216-D, I. C. C. No. 1509, effective April 1, 1904; Texas and Pacific Tariff 8500-H, I. C. C. No. 792, effective June 1, 1902, and Transcontinental Freight Bureau East Bound Lumber Tariffs I. C. C. No. 564, effective 4/15/05, and I. C. C. No. 850, effective Nov. 1, 1907.

EQUAL DISTANCE AND TO DENVER, COLO.

From	Route	To	Dist.	Rate in cents per 100 lbs.	Rate in cents per ton per mile.	From and To	Dist.	Basis	Rate in cents per 100 lbs.	Rate in cents per ton per mile.	Miles.	Difference mills per ton.	Favor of
Alexandria, La. Tex. Pac. Ry	Ft. Worth	Denver, Colo.	1156	34	.00588	Albany, Ore. So. Pac.	1470	Old	40	.00531	314	.00057	Tex.Pac.
								New	50	.00680		.00092	So. Pac.
Albany, Ore. So. Pac.	Hunt.	Wamsutter, Wyo	1148	Old 40	.00697	Eugene, Ore. So.Pac.	1510	Old	40	.00530	362	.00058	Tex.Pac.
				New 47	.00819			New	50	.00662		.00074	So.Pac.
Eugene, Ore. So. Pac.	Hunt.	Bitter Creek, Wyo.	1155	Old 40	.00692								
				New 46	.00796								
Donaldsonville, La., T. & P.	Ft. Worth	Denver, Colo.	1286	34	.00529	Albany, Ore. So.Pac.	1470	Old	40	.00531	184	.00002	So.Pac.
								New	50	.00680		.00251	So.Pac.
Albany, Ore., S. P. Co.	Hunt.	Lookout, Wyo	1279	Old 40	.00625	Eugene, Ore. So.Pac.	1510	Old	40	.00530	224	.00001	So.Pac.
				New 49	.00766			New	50	.00662		.00133	So.Pac.
Eugene, Ore. S. P. Co.	Hunt.	Med. Bow, Wyo.	1289	Old 40	.00621								
				New 48	.00745								

EQUAL DISTANCE AND TO DENVER, COLO.

From	Route	To	Dist.	Rate in cents per 100 lbs.	Rate in cents per ton per mile.	From and To	Dist.	Basis	Rate in cents per 100 lbs	Rate in cents per ton per mile.	Miles.	Difference mills per ton.	Favor of
Nacogdoches, Tex., Hou. East and West Tex.....	Shreveport, Kansas City	Omaha, Neb...	847	23	.00543	Albany, Ore. So.Pac. Co.	1879	Old	50	.00532	1032	.00011	H.E.& W. T.
								New	55	.00585		.00042	S.P.Co.
Albany, Ore.... S. P. Co.	Hunt.	Lava, Idaho...	848	Old 40	.00943	Eugene, Ore. So.Pac. Co.	1919	Old	50	.00521	1072	.00022	H.E.& W. T.
				New 40	.00943								
Eugene, Ore.... So.Pac.Co.	Hunt.	Pocatello, Idaho.....	851	Old 40	.00941			New	55	.00573		.00030	S.P.Co.
				New 40	.00941								
De Quincy, La.. K.S.C.Ry.	Shreveport, Kansas City.	Omaha, Neb...	914	23	.00503	Albany, Ore., S.P.Co.	1879	Old	50	.00532	965	.00029	S.P. Co.
								New	55	.00585		.00082	S.P.Co.
Albany, Ore.... So. Pac. Co.	Hunt.	Montpelier, Idaho.....	910	Old 40	.00879	Eugene, Ore., S.P.Co.	1919	Old	50	.00521	1005	.00018	S.P.Co.
				New 42	.00923			New	55	.00573		.00070	S.P.Co.
Eugene, Ore.... So.Pac.Co.	Hunt.	Bancroft, Idaho	903	Old 40	.00886								
				New 42	.00930								

EQUAL DISTANCE AND TO KANSAS CITY, MISSOURI.

From	Route	To	Dist.	Rate in cents per 100 lbs.	Rate in cents per ton per mile.	From and To	Dist.	Basis	Rate in cents per 100 lbs.	Rate in cents per ton per mile.	Miles.	Difference mills per mile.	Favor of
Shreveport, La. K.C.S.Ry.	.....	Kansas City...	560	23	.00823	Albany, Ore., S.P.Co.	2110	Old	50	.00474	1550	.00359	K.C.S.
								New	55	.00521		.00302	K.C.S.
Albany, Ore.... S. P. Co.	Hunt.	Caldwell, Idaho	557	Old 40	.01436	Eugene, Ore., S.P.Co.	2150	Old	50	.00465	1590	.00358	K.C.S.
				New 40	.01436			New	55	.00512		.00311	K.C.S.
Eugene, Ore.... S. P. Co.	Hunt.	Payette, Idaho	560	Old 40	.01430								
				New 37	.01321								
De Quincy, La. K.C.S.Ry.	.....	Kansas City, Mo.....	719	23	.00639	Albany, Ore., S.P.Co.	2110	Old	50	.00474	1391	.00165	K.C.S.
								New	55	.00521		.00118	K.C.S.
Albany, Ore.... So.Pac.Co.	Hunt.	Shoshone, Idaho	703	Old 40	.01138	Eugene, Ore., S.P.Co.	2150	Old	50	.00465	1431	.00174	K.C.S.
				New 40	.01138			New	55	.00512		.00127	K.C.S.
Eugene, Ore.... So.Pac.Co.	Hunt.	Bliss, Idaho...	718	Old 40	.01114								
				New 40	.01114								

Cross-Examination.

The rates per ton per mile on the Atlantic Coast Line as shown on the Exhibit are higher than from the Oregon lines. I compare the rates for instance from Albany to Chicago with Argyle, Georgia, to Chicago. I show an equal mileage in the left hand column. All the differences on the first page of the exhibit are in favor of the Atlantic Coast Line, and all on the second page except two are in favor of the Atlantic Coast Line.

The Southern Pacific Company charges on stuff from Eugene to Chicago eight one hundredths of a mill per ton per mile higher than the rate from Jacksonville to Chicago.

In preparing the exhibit and in taking these points I took the map that was prepared in the yellow pine case as an exhibit, showing the yellow pine region of Louisiana and Texas, and I picked out points in the central portion of that region as shown on the map.

W. C. MILES, (Record page 553), testified as follows:

I reside at Globe, Washington, I am a lumber man. Globe is in the territory known as southwestern Washington. It is to Southwestern Washington that my testimony will refer. It is a timber country. That is all that is there. There is some little farming but not to amount to anything. The principal industry and the only industry practically in that country is timber, lumbering and logging, sawing and manufacturing lumber. There are some few lumber factories, such as door factories and turning-square factories, but the business of the country is about all lumbering. I have been in the lumbering business practically all my life. I was out of it six years, with the Northern Pacific. I have been in business actively in Washington as a principal since 1898. My plant is on the South Bend branch of the Northern Pacific Railroad about 19 miles from South Bend at Globe. I have been located there for five years last July. Our active operations there will cover about four years and two months.

In 1905 we shut down for about six months. My figures will cover the time up until the 1st of November. Since that we have no figures. I am president of the Southwest Washington Association. It is an association of lumber manufacturers. There are about thirty mills in it. I am connected with the Lumber Manufacturers' Agency. That is an incorporation, which was incorporated to sell the output of a number of mills there. It was incorporated in 1903. We com-

menced business in 1904 and since that time we have been selling the output of from nine to twelve mills in there. More have gone in and some have dropped out, but it practically varied. They are, however, all mills located right in that section.

Seven hundred and twenty thousand feet of lumber a day is easily put out by the mills connected with this agency I speak of. The output of our Association is about 1,500,000 feet a day normally. Practically that section will produce about two millions a day. There are about thirty-six mills that are applicable to our case, from thirty-six to forty-five. Their output, I estimate to be about two millions a day. This Association, which is simply a voluntary association, covers abouty thirty of the mills in there. These are all rail mills. We do not get out to tide water. I am a director of this manufacturers' agency. The books are open to me when I want to look at them. The lumber that passes through that agency is shipped all over the United States. We do not get into the yellow pine region. We do get some small shipments maybe as far east as New York, and once in a while a special order will go down to the south, for some place in there, but it is only for special material. Our lumber goes out by the Northern Pacific. We cut largely timbers in that section, special timbers, fir timbers. It is handled over the Northern Pacific entirely until it reaches Billings, and then over the Burlington, it goes into the Southwest. Our timber at Globe is very high class timber. I mean it will run a higher percentage to clear than some other sections. Our mill will run better than common, about thirty. That is on our figures. I would have to qualify that because in our manufacture we cut a great deal of squares there for turning squares. That is from a 4 by 4 to an 8 by 8. Now, while that will pass better than common, there will be a great deal of common because there will be many defects. Where it was cut into inch lumber it would not go as common. Then there are a great many cross-arms to which this also applies, manufactured down in there. That makes our percentage of common run better than common, about thirty.

Before engaging in business at Globe I was with the McCormick Lumber Company. I was a member of that firm in 1898, until 1899. Then I organized the Rock Creek Lumber Company a mile and a half west of there, and was with them until 1902. Both of those mills are parties to this suit. In 1903 it cost us

$8.25 to put our lumber on board cars. In 1904 six months' operation, it cost us $9.80. In 1905 it cost us $8.28, in 1906 it cost us $9.97, in 1909, $13.11. In 1903 our average net selling price was $11.17; in 1904 $10.94; in 1905 $11.10; in 1906 $12.81; and in 1907 $17.57. That gives an average for those years of $9.88 cost on board cars and gives an average of $12.72 net selling price, a profit of $2.84. That is on material we loaded on cars and shipped. The stumpage cost is in that. The mills in that section mostly own their own stumpage. I would say that would be a fair average of the mills in that section of the country, compared with the mills in the Agency. The mills in the Agency, their shipments since 1904—I went through them and I will compare them in this way. I will give you the average weight their material is shipped on:

14.5 per cent. shipped at 2,000 pounds.
6 per cent. shipped at 2,500 pounds.
16 per cent. shipped at 2,640 pounds.
15.1 per cent. shipped at 2,700 pounds.
48.4 per cent. shipped at 3,300 pounds to the thousand feet.

Those figures are based on estimated weight. They were not taken from the expense bills that came back, because we could not do that. We make up the estimated weights in this way. We take our shipments over the Northern Pacific or any road we are shipping over for a number of years and average them. Now, taking our own mill on green and rough timber that has been shipped from our mill over the Northern Pacific Railroad, their track scale weights show 3,200 pounds to the thousand feet, board measure. That is what we show, but we have to have a little factor of safety there. But on our shipments I think that is near right. Those weights are as near as we can get them. They are estimated, but near enough to give the figures that make a comparison there. The excess cost of the production of lumber in 1907 over 1906 was due to the difference in manufacture and difference in wages and everything else comes in there. It costs you more to handle, handling a different class of logs. There is a constant difference in stumpage. In 1906 and 1907 I allowed 50 cents difference for the stumpage. When I went in there in 1902 I paid $1.50 for the stumpage. I simply follow the market, what I can buy it for to-day, and charge my stumpage at that. In 1907 it was $3. That is what I had to pay for stumpage prior to November 1st. What it would be to-day I do not know. In 1906 I charged $2.50. I can tell you how I buy that stumpage and how that runs. When I went into business in 1908 I could buy stumpage

for 25 to 50 cents from individual holders and $1 a thousand from the Northern Pacific Railroad Company. That was based on an estimate that would cut 40 per cent. better than clear. That is, I know that under those estimates I can cut 40 per cent. better than clear off that land. To-day that same stumpage would cost me, bought from the Northern Pacific holdings $3 stumpage, and it won't go over 20 per cent. better than common, on the estimates they are making to-day. You see the percentage of clear estimates, the manner in which they estimate makes that difference, so I have never followed it by acres. I have simply followed it by quarter sections as we buy. We pay so much.

By "40 per cent. better than clear" I mean that in estimating it you do not estimate the tree. Your whole profit is made on your clear. You don't make and profit on common. If we break even in our manufacture of common our profit comes out of our clear. A higher percentage of clear makes a lower estimate on the land. When you buy a piece of timberland and the stumpage is low, the estimates are low, but the estimates increase as the tonnage goes up. I bought one piece of land that was estimated to cut thirty million, and in figuring that out I figured the clear was simply estimated and those clear logs would run about 40 per cent. better than common. That is, I would leave the balance in the woods. I would take out 100 per cent. of the logs and 40 per cent. of what I would take out would be clear. The rest of it I would let lie there and burn up. The timber there is sold altogether on estimates. We do not buy it by the acre. It would run anywhere from three to fifteen millions to the quarter section. Fifteen millions is counted a good quarter section. An ordinary quarter section would be somewhere about eight or ten millions on the average. Where we are operating the timber is just as good as in any other section of the country. It runs very largely to clear, 30 per cent. 65 per cent. of our individual output, and that would be practically applied to the twelve mills of the Agency, anywhere from about 60 to 65 per cent., was shipped into the territory affected by this rate. I should think that estimate would be fair of the mills in this Association. Our cut is largely timbers down there. It goes east to the railroad companies and all heavy buildings, heavy construction, ore docks and things of that kind. This is loaded into any kind of a car. We prefer an open car for timbers if we can get it, but we have loaded box cars, and stock cars, and refrigerator cars and double deck stock cars. The car

supply has been pretty rank. We have not any car supply to speak of. But the railroads are all pretty heavy purchasers down through our section. They buy stringers which run in sizes from an 8 by 16 by 32 to 9 by 18. They buy an 8 by 10 for an average tie, 12 by 14 by 14 for caps. That is the principal purchase of the railroad companies in our country.

Aside from the 65 per cent. of the output that goes into the affected territory, by this rate, our output is sold locally. By locally I mean that it is sold in that country on a shorter rate, somewhere in there between Spokane and the coast. It has to go into that country between Spokane and the coast, and then there is a little of it that is sold to the local factories. A lot of it is piled up in the yard. The only market we have for this yard stock is eastern Washington and Dakota. They will not absorb the side lumber in this territory affected by the rate. Our manufacture is strictly a specialty. We do not manufacture as they do in the east. Take the white pine people. They buy their logs and saw them into stock sizes, and that is taken into the yard and piled up. It is regular standard stock. That sells all the year around—that is, when there is any demand for it. Our business all comes to us on orders for special things, ours is all the sale of specialties. Now, in cutting railroad material we can only cut those sizes. The consequence is we have a lot of side lumber left over, a lot of lumber we call side stocks. That 2 by 4 and 2 by 8, and stuff of that kind, and that is left standing in the yard, or we ship it east into that limited territory.

The sap is very light on fir. Our sap amounts to but very little. Of course the clear comes from the outside of the log. We made the sap boards, or outside boards, into flooring and things of that kind. That is the valuable part of the lumber. When we cut up these large railroad orders for large timber, we got the parts that are good to put into kiln dried stock. We manufacture it into kiln dried stock. The 48 per cent. of our shipments, weighing 3,300 pounds to the thousand, would represent the parts that we ship green or rough, and the balance would represent what was dressed or kiln dried.

There have been orders for lumber cancelled all through the district. When the order is cancelled it is taken back into the mill and sawed up at a loss, because it is not standard stock. We have to do the best we can with it. Sometimes you will have some small sizes, you have to work them down

to a standard size. You have to cut down to the next lowest size. No timbers go out through the Billings gateway at all. They go out by the Transfer, to Duluth, and they go to Chicago and down the lakes to Cleveland. There is a lot of timber shipped from that country in long lengths to Cleveland and Chicago. They are for special buildings. The rate to Chicago is the same as the rate to Omaha, 50 cents. That is, it was prior to this rate that went into effect November 1st. We cannot move our yard stock into Omaha on a 50 cent rate. We cannot compete in that territory. At Omaha and Missouri river points they demand yard stock and dimension, building material, 2 by 4s, 2 by 6s and 2 by 8s. We sell in Denver. We go down into a small territory in Denver. We can get into only a small territory there, but we do get into that territory by the Burlington railroad. We get into Denver proper, a little strip on the east side, and we get a 40 cent rate to the west side of the state. We can sell in a territory where we have the 40 cent rate. We ship through the Silver Bow way, but it generally goes by Billings. We find the route by Billings a satisfactory route when they are moving traffic. We cannot get into Salt Lake City. Our rate there is 45 cents. That 5 cents shuts us out. If we get in through the Portland gateway at 45 cents that would help our section that much. It would make a point to slough into. I think we would sell some but it would be a sort of an overplus market.

The Northern Pacific very often say to us, "You cannot load cars off the N. P. rails." They maintain a balance between the roads there some way. I do not know how they do it, but they maintain a balance, and when the Burlington gets too many N. P. cars down there they stop shipping them. Some months we can ship an N. P. car on the Burlington rails and some months we cannot.

The car conditions have not been satisfactory for the past 2 years because we cannot get the cars. They issue embargoes restricting the movement of cars from off the Burlington rails to the Northern Pacific. They issue such orders spasmodically, but not continually. They will say at certain times, "You cannot load an N. P. car off the N. P. rails." Then in two weeks probably, or whenever they get this car business adjusted they will say, "You can load on the Burlington rails, but not off the Burlington rails." The N. P. cars would not run off the N. P. rails all the year.

The local sales in that territory in the southwest do not

amount to anything. Our local business would not amount to $300 a year. I mean the team sales. The slab wood and refuse is burned. There is no way of disposing of that profitably.

These different mills on these lines have little communities built up around them. There is not much of a community at our plant because we are between two little towns, Frances on one side and another little town on the other. Generally on this South Bend line the country is building up with little communities. They are dependent upon the lumbering industry. They have no other industries to support them when these mills are closed down. It is a rough country, and they have no other lines of support. When the lumber is taken off the soil is good in our valley, but the bottoms where the land is fertile are very narrow. It is hill land in there. It would make good fruit land or grazing land and on the bottoms the soil is rich. Taking the whole country covered by my testimony, that is its general character, adaptable for farming, but more for stock raising. Fruit can be raised but it is not a farming country in the sense that the valley is. The country is very hilly. It is very much cut up.

Since I have been operating there they increased the minimum, equivalent to a raise in rate to us, because it puts us at a disadvantage with our competitors. The minimums on the eastern roads are favorable to them, and we come into competition with a man who has a light minimum, and we having a heavy one, cannot sell in competition with him. We have to say to our men, "You have to take that car loaded absolutely with so much lumber." Say that I have sold a man 20,000 feet and the car comes in and I have to put 30,000 feet into it. I have simply got to force that onto my customer and it is pretty hard to keep trade under any circumstances, and when you come to a position of that kind you are right up against it. That is all, you cannot sell. If you have something that he has to have, then you can sell it, but not very well otherwise.

They are continually changing the rules in regard to loading. They follow the Master Car Builders' rules in loading. The rule provides a 4 by 5 car take, and you have to cut that down until you have about a 3½ by 2½. You might as well use a 2½ by 3½ in the first place, because your strength is no more than the weakest point. And now they are putting on longitudinal braces on the outside, and the Northern Pacific has added a burden of 118 feet in board measure, and the cost

altogether, figuring the value of it at $10 and the weight of it at 33, on a 50 cent rate, amounts to about three dollars and something, which is a great additional burden.

What they are trying to do is to make us stake a car in a 3 by 4 stake pocket that will hold the force of one of those heavy engines, and when the engineer gets mad and throws her over we cannot do it, it sweeps the whole thing off.

These stakes are made of fir, a good strong stake. It can be common, not necessarily free from knots. It has to be free from pitch seams, good strong common lumber. We got a 500 pound allowance on weight for that. We get no pay for the lumber. It follows the car. It is lost to us. After our lumber leaves the Northern Pacific at the Minnesota Transfer, going into Chicago, it is routed over various roads. There are several roads that run there, the Wisconsin Central, the Milwaukee, the Chicago & Northwestern, the Burlington, the Chicago Great Western. The rate from the Transfer to Chicago is 10 cents a hundred flat on everything. That includes cedar and double loads and fir and everything. Our rate to the Transfer before the rate was raised was 40 cents on fir lumber. It was 50 cents on cedar lumber and shingles and 50 cents on double loads. From the Transfer our rate has been 10 cents per 100 and is to-day I understand. The distance from Chicago to the Transfer is 425 to 475 miles, I think.

This business has been solicited from me constantly. They are right there asking for it, all the roads. They say they want the traffic. I told some of them when I heard about this rate that they should not spend their time coming down there for an unprofitable traffic, and they said it looked good to them,—the Wisconsin Central, the Milwaukee and the Northwestern. They all maintain offices out there at Portland, Tacoma and Seattle, and have been soliciting business ever since I have been in the business. They make no discriminations except on the items I have mentioned.

There has been a steady increase in the cost of stumpage during the past ten years. The estimates were more liberal in the early days than now. The seller is gradually increasing his estimates, making them higher. We figure our base price of lumber on a timber list. It starts in with about a 6 by 12 to a 12 by 12. There is where we base all our figures, and I guess about now, I think before I left home I heard of an order given at $7.50, there was an order taken at that price. We base our timber price on a 12 by 12—everything below 32 feet sells at one price; then when you get into the longer

lengths you begin to increase your price. You do the same thing on your small sizes. Twelve inches, you know, sells at a base price, and then when it gets up 16 by 16 and 18 by 18 you increase your price continually and we base our figures on that one base price. And they sold as low as that, although there were orders at the time. I can just about give you the run of prices in my mind, I think, since 1901 or 1902. I will read them to you. I have that down here some place; I jotted them down this morning. In 1901 the base price here was from $6.75 to $8. In 1902 it was about $9. In 1903 it was about $9.50. That was fluctuating. In 1904 it dropped back to about $7.50. In 1905 it was $7.50 to $9. In 1906 it jumped to $12 and in 1907 it was $14. Now, it is practically back to $7.50. By "practically back to $7.50," I mean it may be sold at that. I have sold no lumber myself at that figure, but Mr. Dody, a member of the Lumber Manufacturers' Association, has. In our mills we own the stumpage, the majority of the stumpage is not owned by the mill men. The mill men generally own their own stumpage. Taking the whole section, most of the stumpage is owned by outsiders, who bought it up on speculation. They bought the land by the acre. I could not figure what it cost them, the stumpage, but it was very low. I think it was $6 that they paid in the deal, that took that land in there. The increase in the price of lumber has very largely gone to those men who own the stumpage. The man who has gotten the money is the man who had the land and when the mill owned its stumpage the mill has gotten that increase. The Weyerhaeuser Timber Company owns the most of the stumpage in that country. The report is that they bought a million acres for six million dollars. To-day their price to the mill men is anywhere from $2.50 to $3 a thousand. There are sections here that will run 50,000,000 feet. $75,000 is the highest price I know of being received for a single section. That was sold about two years ago, but I cannot tell exactly as to the date.

It is true that Mr. Weyerhaeuser is a director of the Great Northern Railroad Company. The Weyerhaeuser Timber Company controls the market of stumpage in that country within the land grant of the Northern Pacific, west of the Cascade Mountains. The original grant was 40 miles on each side, and the new grant was about 20. Mill men in that section of the country can only buy stumpage as they operate. I buy my timber on a contract to remove it within a certain period of time. I do not get the land, I just get the stump-

age. I cannot get the land. I have to remove it within a certain time.

The Puget Mill Company are supposed to be heavy holders of stumpage, but I don't know just where their stumpage lies.

At the present time there is no market. We are closed down. The rumor of this rate going into effect was heard all summer. First they said it would go into effect the first of October, and then they held off and we thought maybe they were going to use a little better judgment. The first of November it was put into effect. It checked trade at once. Before leaving there I had occasion to find out the actual condition of the mills in our section and in our Association. 90 per cent. of the mills in our section were closed down about the time I left there. Our business stopped before the panic. The mills have been closed since November 1st. Some of them closed before that, but most of them closed just since November 1st.

We cut these large timbers on special orders. We do not cut the timber until we get the orders. We generally take all the orders we can get when the market is going up. The orders have not been coming into our section to amount to much since last April, and the orders stopped about June. The lumber we pile up is the lumber necessarily make in cutting these special orders. We have to pile it up, but we do not run our mill unless we have an order for the big stuff, which pays us, and we have to have orders enough to run the mill or we cannot run. We have not been receiving these orders since the last of April. I suppose there are about seventy-five million to one hundred million feet of this yard stock piled up, in our section, to-day. There has been some cancellation of our own direct orders. I have heard of a great many cancellations of orders indirectly. Mine were Northern Pacific orders. They buy their ties for so much and then set a definite time to finish the contract, and they have always let it run over before this, but this time they did not let it run over, and so it was practically, although not really a cancellation. As to the orders on timbers, I was not cutting timbers this last year, but there have been a great many orders of that kind cancelled throughout that country. It is the common impression in that section of the country that such orders were generally cancelled by the railroads at the time this slump took place, about the time it was certain that this rate was going to be put into effect. The effect of this on the country down

there has been to paralyze it. The dropping off of orders was continued all summer. It was getting slower all the time that this agitation was going on. Personally, I did not get any cancellations of orders. It was a rumor that we all heard that these orders were being cancelled. Our orders were getting slower all the time after April. It was just gradually getting down. I have heard of this advance in rate for several years; it has been talked about and talked about. There has been a rumor all the time. It has been a general rumor in our country since the spring, published everywhere and talked about. It was discussed in the Association meetings, and from that time the orders began to slump off in this section of the country. The whole community is probably dependent upon that industry. It is my opinion that this increase in rates cannot be absorbed by the mills. It wipes out our profit. Our margin of profit is not high enough. With us the increase amounts to 2,867 pounds. That is from the figures I have given here. That is the average; 10 cents advance means 286.7 cents per thousand. Our profit there only shows $2.84. That is the profit on our shipments. The balance of it that is in the yards standing there, I don't know what we will get out of that. If this rate keeps up, we will lose on it, that is all. The consumer cannot be made to stand this increase. We are fighting continually for our market. Our market goes back and forward, just as yellow pine goes up or down. Yellow pine and the manufacturers of yellow pine dominate the market, as they have the biggest output. Yellow pine, white pine and hemlock is in direct competition. Their output runs something like nineteen billion, I think, while our output is about six billion in the two states there, and a large portion of that goes out cargo. So we do not get enough to have any say in the market. We have simply got to get our price up and down as yellow pine moves up and down.

The people in our territory, as well as on the Pacific Coast, have been fighting for a 40 cent rate to Missouri river points for several years. It has been common talk among the railroad men that we would get a 50 cent rate to the Transfer before we got a 40 cent rate to Missouri river points. I have heard that remark a number of times in ordinary conversation.

Cross-Examination.

I could not give you the date as to when it was first rumored that there was to be an increase in rates. The orders have

fallen off commencing in April. I and the other members of the Association were situated about the same way. The material which we ship to Chicago is largely timber from our section, tank stock, and specialities of that kind. A timber 32 feet long, 8 by 8, was running about twelve dollars, I should say, last year. An 8 by 8, 32 feet long, could not be shipped into Chicago. We would not ship much timber into Chicago that we sold at the base price. The timber would be 16 by 16, and things of that kind, for posts and heavy construction. With those large timbers our competition is principally with steel and concrete. There is no other timber that can compete.

I think this increase in rates prevented the sale or giving of orders in April for this long stuff going into Chicago, because it created uncertainty; no one knew where he was. I would not have taken an order two months ago if I could have gotten it; I would not have made a contract on account of the suspense and uncertainty. I do not suppose that in April it would have affected the orders at all.

It is admitted that "The American Lumberman" for March, 1907, contains an article headed "Rumored Advance in Lumber Rate. Interesting, if True," and that it refers to the rates under discussion. Before we knew these rates were going into effect, our orders for material to Chicago fell off, but not before the rumor that they were going into effect.

These rates, so far as the ability of long timbers to stand competition against other timbers in Chicago is concerned, would have absolutely no effect against steel and concrete, which are very heavy competitors of long timbers. It is very hard for us to move long timbers with that penalty you put on of 10 cents a hundred now. You penalize long timbers 10 cents a hundred. That amounts $3.33 in the advanced price. They are building concrete buildings in Seattle now and in Portland.

We have shipped long timber as far as Jacksonville, Florida, some to New York. I have never shipped any personally to Philadelphia or Pennsylvania. They go there, though. The long timber market is limited, simply specialities. The larger percentage goes to Chicago, than gets east of Chicago, because the farther east you go the harder to get orders. There is a great deal that goes to Pittsburg. There is no call for them in Omaha. There are a few timbers shipped probably, but it does not mean any amount of freight in that line. I should say 40 per cent. of our shipments weigh 3,300 pounds.

Short timber and railroad material of every kind will weigh 3,300 pounds. Not necessarily all long timber. We shipped a lot of the shorter stuff to Ashland, we shipped it to Duluth, for the ore dock building; we shipped down into Michigan for ore dock building there; and to Chicago for the construction of buildings, for ship building and dock building and things of that kind, and on through to Pittsburg for barge building. The short timber is moved readily on 50 cent rate, yes, sir. There is no other timber that competes with these large sizes; with the small sizes there is Norway, and hemlock and yellow pine that compete. We have been able to ship this short timber into Michigan against the competition of white pine at a 50 cent rate at periods, that is, when they let us. I mean, when their price is high enough so that we can come into competition, but whenever the price comes down that pushes us back. In the last couple of years we had all the business in that country that we could handle, but we could not get out much because we did not have the cars; but if we had had the car service the shipments would have been very much heavier. We have had innumerable orders in the last two years, all kinds of orders for all kinds of timber, from the east, in the last two years. The car shortage has kept the prices up to a premium. Last year I could get the absolute list, which is something that a man hardly ever expects to get, and not only that, but we got over $2 premium on top of that; we could have gotten that if we could have laid the stuff down at Duluth on a certain day. The premium on the price of lumber has surely had an effect on the price of stumpage. If lumber was selling at the price at which it was selling several years ago stumpage would not be worth more than $1.50. I would judge that to be the case; I don't know; conditions in our section are very hard. It is hard to tell. I know one concern owns our stumpage. They are able to hold it; but if it was diversified and sold by individuals just the same as stumpage has been held in other districts, then it would affect stumpage, but in this case I do not believe it would affect stumpage for I don't believe you or I could buy from the Weyerhaeuser Timber Company for one cent less to-day than we could three months ago. I know if I was in their position I would not sell.

I think the stumpage industry is going to be exceedingly prosperous. I do not know whether the lumber industry will be prosperous, that is, from the manufacturers' point of view. If I am able to get a rate that I can ship on, I believe

I can do pretty well. I think sometime or other that lumber is bound to be valuable, and the man who is able to hold it is going to get his money out of it, even though I, as a manufacturer may fail in the meantime.

The purchase from the Northern Pacific by the Weyerhaeuser Company was of the odd sections only. The Northern Pacific only owned the odd sections. Where I am at the present time, I bought my timber in July, 1902 at $1.50. I bought sixteen million feet. I bought that by stumpage, and paid $24,000 for it. It is sold altogether under a conditional contract. You pay for it as you cut it off, providing you cut it off as fast as these notes that are secured by the conditional contract mature. Otherwise, if you do not cut it off as fast as that, you have got to pay the note when it is due. The total price and the quantity for the purposes of the purchase were fixed when I bought it. I think I have cut about eight million feet off of that tract. I cannot say whether the eight million feet has overrun any. The timber bought in 1898 would overrun. Timber bought to-day, on the 20 per cent. better than common estimate, I don't think will overrun. My investment in 1902 was thirty thousand dollars in cash. That was our corporate capital. I have shipped pretty nearly twenty-five million feet since 1902. I am a heavy shipper. Our mill cost us about thirty thousand dollars.

To shorten this thing, I will tell you what I will do with you, Mr. Korr. I will make this statement that we can show by our books that since the day we went in there we have cleared on the amount of lumber shipped and cut and piled in the yard, taking it all together, we have cleared $3.28 a thousand. Now, that is from all sources. That is from any timber deals, any lumber bought outside, from our store and everything of that kind. These figures as I have stated on my direct examination only apply to the material that we have loaded on cars and shipped and actually know what we did it on. That is all we can tell.

Now, we have there two million or two million and a half feet piled up in the yard. It is impossible for me to tell you what we are going to make on that. I may lose the whole thing. Then I have not even made the figures I have given the Commission. I worked for the Northern Pacific from 1894 to 1898 as foreman of their bridge department. I had been a lumberman before 1894 down in that country. We get all kinds of territory near the Portland gateway. If the Portland gateway was opened, you put competition in our territory.

Part of the time we make a specialty of the manufacture of telegraph cross arms. We engaged in that when I was with the McCormick Lumber Company and when I was with the Rock Creek Lumber Company. That was prior to 1902. We have made very few since, only in the rough since. The McCormick Lumber Company worked up quite a trade in that. They started to make cross arms in 1894, I think. I think McCormick told me he put $2,500 into the investment. I think $500,000 was the stipulated price that he was to sell out for the other day, but as near as I can find out, the people did not come through.

If the Portland gateway were opened it would enable us to get down through there. It is the territory tributary to the Union Pacific which I had in mind, west of the territory that I already reached. By sloughing my lumber into that territory I can sell into that country this common stuff for which I have no demand at the present time. There is a certain amount that would go down there, or could go there. There is always a point in your trade where you have got a territory that you push your surplus into. You have got to have that. My surplus is this common stuff of which we have seventy-five million feet, practically the side lumber. This surplus is this common stuff of which the mills in our Association now have seventy-five million feet stacked up alongside of their mills.

We do not do much in Montana. Dakota is our best market for that kind of stock. We have a limited territory in there now in which we can slough this stuff off as best we can. The main object, as I understand, of opening the Portland gateway was that we could make the railroad companies equalize the rates, and go to the Missouri river for 40 cents, the same as we went to St. Paul for 40 cents, which would give the fir men a chance to compete with the yellow pine men. The yellow pine roads protect their shippers, and we simply wanted the railroad people to protect us, and also this ability to slough our rough lumber.

If a quarter section of land were estimated at eight million feet 40 per cent. clear, if you had logged only eight million feet, if you had cut on the estimate and taken the best of that timber out of there, that timber would have cut in the mill 40 per cent. better than common. We would take off that quarter section enough so that we would get eight million out of which there would be three million, two hundred thousand feet clear. If I took only eight million feet off, if I held

the cut down to the estimate of eight million feet, if it was estimated at eight million feet, 40 per cent. of which was better than common, that would give only about three logs to the tree, and that would all be in the lower part of the tree where the clear lumber comes in, and then you would get 40 per cent. better than common. If you took all the lumber off the land you would get maybe twelve million feet, and cut the relative percentage of clear down to 20 per cent. or something like that. The last few years we have not left much lumber on the quarter sections as we cleared them off, but we used to leave quite a good deal. Taking a quarter section which he had estimated would cut eight million feet of lumber, of which 40 per cent. would have been clear stuff, we would cut out all small trees, all hemlock, all that stuff, and hold it right to that, and would cut eight million feet of lumber, 40 per cent. of which would be clear, and would pay for the eight million feet only, and would pay for that a given price per thousand, where we buy it on the estimate.

In 1902 we paid $1.50 per thousand, but not on that kind of an estimate. When we bought at a later date we paid a higher price, we included all timber on the same quarter section which would have cut 20 per cent. clear, and as a result the same quarter section would have increased in stumpage, possibly from eight million feet to twelve million on the same quarter section, and we would have to pay for all the timber at the increased price. That means that as the price of stumpage increases the estimates always come up. The stumpage not only doubles in money, that is in the price per thousand, but it doubles in amount. It was in 1902 I paid $1.50 a thousand. I purchased all the timber on the section, whether included in my estimate or not. We cut practically all the clear out of it.

Along the west line of the southwest quarter of section 35, that was very rotten in there, and I think I would be safe in saying that 25 per cent. of it is lying there yet. I would not allow any but the saplings to stand. The saplings are little stuff, eight, ten and twelve inches. These eight to twelve inch saplings are still standing in the forest and are surrounded by all this dead stuff, and tops and butts and everything of that kind.

Periodically we have tremendous fires extending over the entire northwest, and the saplings are all destroyed and rendered unmarketable. It is not practicable to make a second

cut in that country. There is not margin enough in the business, and nobody cuts them in that country.

R. L. McCormick, I believe, represents Mr. Weyerhaeuser in our country. I do not mean to say that the Weyerhaeuser Timber Company have ever held me up. They simply charged the average market price, and we were just paying the going price of stumpage. I think the market price of logs down at South Bend and Wilapa Harbor, in our section of the country, logs are lower than in almost any other section of the Puget Sound country. Wilapa Harbor as a matter of fact has been the lowest log market for a number of years in the entire northwest; there were no mills there to make a demand. There are now. I have understood that the Weyerhaeusers have sold stumpage down there for $2.50 or $3 a thousand, just about the same price we have been paying.

In purchasing our timber we buy it on estimates, on the estimate that it will cut so many thousand feet. The log rules are based on inch board measurement. Our total cut since 1902 has been possibly twenty-seven or twenty-eight million. That is, our mills. The double loads for these long timbers take a rate of 10 cents a hundred higher than the single load on the Northern Pacific Railroad in this territory affected by this rate. Since the Weyerhaeuser Timber Company bought the odd sections they have bought up a great many of the even sections from the settlers. The Continental Timber Company, an auxiliary corporation of the Chicago, Milwaukee & St. Paul Railroad Company has been a heavy purchaser of timber in that country for two or three years, and are today heavy holders of stumpage. The McCormick Lumber Company commenced business, I think, in the fall of 1894. They commenced constructing their mills January 1, 1898. The company was organized probably in 1897 in the latter part. There was a deal pending for the company to sell out but when this rate went into effect it was all called off.

The waste occasioned by fire would be increased by this increase in rates, because you have to go back to a point in your stumpage where you get a greater percentage of clear, and you have to leave more of the lower grades of timber in the woods.

GEORGE H. EMERSON (Record, page 659), testified as follows:

My residence is Hoquiam, Washington, situated on Gray's Harbor, it opens to the sea about half way down the coast, in a general southwest direction from Tacoma, 96 miles. We built on Gray's Harbor in 1882. The Northwestern Lumber Company built its mill on Gray's Harbor at that time and had to ship the lumber in there to build its mills. To-day there are twenty-seven lumber and shingle mills on Gray's Harbor, having an aggregate of about two and a half million feet of logs manufactured into timber and shingles every ten hours. In the year 1898 we extended the Northern Pacific Railroad through the City of Aberdeen and the City of Hoquiam, a distance of about six miles, to our plant, giving to that road the right of way and depot grounds in those two cities, and furnishing the money to construct its roadbed. At that time we prepared for the eastern trade, eastern shipment. We built a planing mill, dry kilns, storage shed, a shingle mill and a box factory and some other things, to the extent of an investment of about $250,000, together with stock that we had to carry for the express purpose of the eastern business; and the following year, 1899, we shipped some fifteen million feet over the Northern Pacific, or 869 carloads, averaging 16,458 feet to the car; also 291 carloads of shingles, averaging 156,000 to the car.

This business increased until in 1902 our shipments were twenty-three million feet. From that time on they have rapidly decreased until in 1906 they were twelve million, and in 1907 they were 5,658,000. In the meantime our shingle shipments have increased to 341 cars and dropped down in 1906 to 100 cars, and in 1907 to 62 cars. The class of material that we ship to the east is largely spruce. The demand for that had been uniform, a demand for all we could furnish, continuously through all those years. That demand has not been affected by the San Francisco boom of 1906. At least not to any extent; it sympathized a little in the price of logs but not much. Of course, we have been affected by the additional cost of labor, the increase in the price of labor, but the demand has been constant and prices corresponding closely to the past during that period of time. At the present time the price of spruce logs is as high as it has been at any time during the boom. The difference in our shipments between the

large figures and the small figures has been exclusively on account of car shortage. The car shortage has been something fearful, and it has probably cost us, according to our estimate, hundreds of thousands of dollars in loss of the eastern trade.

Inasmuch as the grade of lumber that we can manufacture from our logs for the eastern trade and the grade of lumber we can manufacture from the same lumber for the coastwise trade is a very different material; when we saw it for the eastern trade we saw it for clears and then for shop trade and then for box trade, while for the coastwise trade we have no demand for the shop grade, and we have to make the shop grade into a box grade which brings a great deal less money.

In the shingle business, to illustrate the great difference in the two markets, we received one morning a few months ago, two wires, one from the east and one from the south, each of them calling for three million shingles. One of them offered a dollar a thousand more than the other, or very close to that, for those shingles. We accepted the lower price. In other words, we took the loss of $3,000 that morning on that order for shingles because of our ability to ship to the one market, and our inability to ship to the other.

That was about four months ago when shingles were at their highest price; the highest price was offered in the eastern market. By the southern market, I mean California. One was a California offer and the other a Kansas City offer. I have been interested in the lumber business from 1866. I first went to Washington in 1882. The Northwestern Company was then formed. It was formed a short time after that, and we built our first mill in 1882 on tide water. Our first rail connection was in 1898. We had no rail connection previous to that time. Our product all went coastwise or foreign.

We manufacture very largely spruce lumber and shingles, spruce lumber for the eastern trade. In 1898 we practically built the connection with the Northern Pacific Railroad. We have been continuously engaged in the lumber business since then.

My official position is vice-president of the Northwestern Lumber Company. In 1899 our average shipment per car was sixteen thousand and some odd feet. In 1907 it has been 27,800 feet, an increase of 67 per cent. in the capacity of the cars, and in shingles it was 44 per cent. in capacity of cars. In the year 1907 our total sales of lumber and shingles by rail amounted to $154,000. Our imports of merchandise during the same period of ten months, over this same system, the

Northern Pacific Railroad Company, and mostly from the east, amounted to about $500,000. We unloaded more cars during that period of time than we loaded. I mention this by way of stating that the dropping off of the western trade, the westbound trade, will be very largely in proportion to the reduction of the eastbound trade. With us we have countermanded all orders for merchandise in the east, we have discharged the greater portion of our clerks, and that line of import will cease with our inability to export over the lines of the Northern Pacific Company.

At the present time, of the twenty-seven mills, shingle and lumber, on Gray's Harbor, I think there are only two—there may be three—operating. Those two or three are operating in a very small way. In our case we reduced the price of labor 50 cents a day. Then we reduced the number of hours from ten hours to eight hours. Then we reduced the number of days from six to five per week. There was no sale for our material. We are continuing this operation for the reason that we want to keep together a well trained crew, employes who have been with us for years, whom we cannot afford to dispense with, and whom we cannot afford to see go hungry, and we are piling up material in the hope that there may be a turn of the tide that will allow it to go in some direction.

The cause of the shutting down was two sources. The year 1906 had been strictly a boom year in the lumber business of the Pacific Coast. It came about because of the San Francisco disaster. And later the Valparaiso disaster, which made a very extraneous demand for lumber. That demand was first for shelter, and the question was not as to grade, nor as to price, nor as to the dimension even. It was simply "Send us lumber," and almost any price was acceptable. That temporary demand was supplied by the latter portion of 1906, and the new yards that sprung up were well stocked in 1907, and a little later the labor troubles in San Francisco stopped all building, and all coastwise demand came to an end, and with it, of course, lumber slumped. Then the eastern agitation of an increased freight rate shut off all eastern orders, none came to us. So that the two causes combined have brought about the present conditions. With mills that are shipping coastwise and foreign, as well as eastern, the two causes act together. In the mills that are exclusively rail mills it is for them to say what those causes are.

There are twenty-seven lumber and shingle mills at Gray's Harbor. They manufacture two and a half million feet of

logs into lumber and shingles every day. I should say about four day's labor is required to produce a thousand feet of lumber from the stumps. That would mean that there are ten thousand people on Gray's Harbor employed directly in the woods and the mills. I should say that each one of those should represent a family. Probably you could safely put it at 25,000 people or more as being dependent upon this industry. Starvation stares them in the face if the lumber mills are indefinitely shut down. The greater proportion of the shingle men are improvident. They have seen very high wages. That results with a certain class of men, in their spending it very quickly; so you take an average shingle worker on the Pacific Coast, and I do not think he has got $25 ahead and probably a good deal less. There is no other industry that can employ any of those people. Our company operates subsidiary companies. We have the towing business on the harbor, and also merchandising business. We get our supplies for our merchandise business and our manufacturing business very largely from the east, shipped in by rail. About 65 per cent. of all the mills on the Pacific Coast are not timber owners. In the Gray's Harbor country until within the last year or so all the mills have been entirely dependent upon the purchase of their logs in the open market. The price of logs should be entirely segregated from the price of stumpage. A man or a mill who has been fortunate enough to invest some of his or its money in timber has made a good return; that is all that can be said of it. Twenty-five years ago I went into Gray's Harbor and at that time I invested in timber land at $1.25 per acre purchased direct from the Government. Instead of that I could have put my money into town lots in the City of Seattle, Washington, at $100 apiece. Those town lots have since grown to be worth $100,000 apiece, or an increase of 1000 per cent., and the best possible increase in the timber lands would be less than 100 per cent. It would have been ten times better for me to have invested in town lots than to have invested in timber land. It seems to me that all mill men have the privilege of buying timber land if they see fit, although most all of our timber is not owned by the mills. In that connection it might be said that the Northern Pacific Railroad Company is the largest owner of timber land on the western coast. Had they retained their lands and sold them during the boom year that has just passed, they would have had money enough to have doubled tracked their railroad to the Coast and would have been able to haul their products at so much less cost that they

would not have found it necessary to make the increase in the freight rate.

I think there is no man that can give a just estimate of values. If there be any method by which the value of a grown tree can be calculated, it is by the cost of growing another one. Any method by which the timber crop can be valued would be the cost of reproducing it. Your probably could not reproduce the timber crop of the west for twenty dollars a thousand. Now no man will sell stumpage unless he thinks he can buy some adjoining stumpage at a profit. But where there is no adjoining stumpage to be bought there is no man who will sell his stumpage at the present price. Take some sections of the country; the opportunity to replace stumpage has already gone by. The man who owns a certain amount of stumpage can own that much and never own any more in that location. He will naturally keep his timber until such time as it will yield him some such return as he thinks it is really worth.

When we went there we could buy the timber for $1.25 an acre. I think it is worth several times that now, it is worth a hundred times what it was worth. In the same connection, a town lot in the City of Seattle has increased a thousand times in value if bought at the same time. The Northwestern Lumber Company owns timber lands. They hold about 25,000 acres, but we have never been cutting from our land until such time as logs reach the price of $10 a thousand, then we put in a camp. We have always bought in the open market until the logs reached something like a price at which we could replace the stumpage in that immediate vicinity. We did not consider that timber had reached a price that justified our cutting our own logs. That is also true of many other large timber owners that are also mill owners in the State of Washington. One of the largest timber owners I know never cut any timber from his own lands up to the present time, and he is one of the large mill owners also.

In the case of the small manufacturers, they are most all of them more or less in debt. Either they have not paid for their plants or they have borrowed money to build their mills, or they may have bought timber lands and become obligated for those. In case of the larger owners they are amply able to hold their timber until such time as another railroad reaches the coast, or the Government settles the question of ownership or control of the railroads, or the Panama Canal is completed; either one of which is within striking distance, perhaps. In

case of the latter thing happening, we can have our own transportation to market and be independent of the railroads. It would seem to me that the greater portion of the benefits of our timber haul that the railroads would receive, must be obtained prior to the opening of the Panama Canal.

By the Panama Canal we could reach the entire eastern coast market of the United States, from which it is only a short distance to the interior. I think that as the effect of this increase of rates a great many of the small manufacturers will go to the wall if this suspension lasts a few months, and enable the larger holders to accumulate these lands and hold them.

The matter of the forest waste involved in getting out the grade of lumber that we manufacture is a matter that I have given considerable attention to in years gone by. I can perhaps reach it by reading some things that I have written on that subject, most of them having been written a good many years ago.

"The waste of our forests is not in proportion to the price of lumber in the market, but increases much faster than the price falls. In 1896 the price of logs had fallen from $5.00 to $4.00 per thousand feet. At that time my memoranda shows the following comment on the waste in the woods:

" 'The first six or eight feet is left to the stump, the next forty to eighty feet is taken as logs, the rest of the tree often eighty to one hundred feet is left in the woods because of no market for that grade of logs.

" 'Two years ago this would have been hauled and would make timber of full strength and durability. The small amount taken is less than 50 per cent. of the fir and spruce, while all cedar and hemlock all rough or conky trees are left for want of a market. The waste of our forests is over 60 per cent. and the amount of material left is the cause of many conflagrations.

" 'The stumpage on this 40 per cent. is about 75 cents per thousand feet, and that is again reduced by mill scale, where 10 per cent. of the logs are regarded as unfit for their requirement.'

In November, 1902, I again wrote:

'The preservation of our forests is important. We should save them from fire, also from wanton destruction by our lumber men. Which of these two evils is the greater admits of argument; the lumberman leaves in the woods all hemlock, which in the Gray's Harbor country can be safely estimated at

20 per cent. of the total timber crop; all tops—these are forty to one hundred feet in length and we estimate them at 15 per cent. of the crop; four to eight feet of the butts of all trees are left in the stumps—this together with an occasional conky or rough tree will make another ten per cent.; add to this the long butts left on account of pitch rings or ground rot and sometimes a broken cut or a cut left for other imperfections, we have wasted still another five per cent.; then there are left all shattered cedar and the cedar tops and many a cut in spruce long enough for veneer or staves.

'As enumerated 50 per cent. of the timber products of our forests are wasted by the lumbermen of today. If then we waste half the crop, have we not ourselves wasted our forests faster than have the fires?

'If our railroad companies would equip their roads to do the business that offers and gives us a 40 cent rate to Missouri River points on hemlock shooks, all hemlock trees now standing would have a good market.

'Our old choppings are hunting grounds, pastures, berry fields, opportunities for clearing, etc., and each one of these causes drops a match, or empties a pipe in tinder. This smoulders through June, July, August and September, until conditions are exactly right, the air void of moisture, and wind hot and strong. Then each of these many smouldering, smoking smudges, leaps into flames.

"Experience shows green timber does not burn except from extreme heat, a heat that withers and dries the tops. This must come from extensive choppings, or slashings, or from dead timber areas.' "

"Then, in January, 1905, I appeared before the American Forest Congress here in the City of Washington, and on that occasion, among other things, I took up the waste in our forests, and, after having stated the wastes of the past, during the methods of logging that were then in vogue by the use of bull teams and so forth, I say:

"Times have changed somewhat. Steam skidders for yarding and steam road engines for hauling, have replaced the bull team. The railroad is fast replacing the river.

"Cedar has become the most valuable of our woods, and hemlock is found to be our most beautiful interior finish. Standing timber has a greater value and is cut closer, but enormous tops and most of the hemlock are still left in the woods. Logs with no clear cannot be handled at present price of lumber without loss. The per cent. of the crop now saved is increased,

but 40 per cent. is still wasted, nor is it the worst. Those choppings, with their continuous piles of tinder, are ready to flash into flame from the spark of a match, and when conditions are ripe they burn with a heat so intense it reaches to adjoining green trees, and they, burning like torches, create a whirlwind that, with the roar of an avalanche, twists the tops from the trunks." * * *

"Were we a little nearer the great markets of the United States, or were our freight rates less, or were the demand a little larger, these tops and hemlock could be handled, and the greatest difficulty in perpetuating our forests thus removed. * * *

"The close harvesting of our timber crop would greatly reduce the amount of material left on the ground and correspondingly reduce our forest fires. All hemlock left standing dies, all other trees left standing are killed by the fires that follow the cutting of our timber.

"The standing timber of Washington is a guaranty to our railroads of future eastern freight. Every average tree stands sponsor for over sixty dollars on a 40 cent rate. When the railroads raise their freight, they both reduce the price and raise the grade of our timber shipments, and correspondingly increase the waste of their heritage and the heritage of our children. Were they to give us ample cars and a forty cent rate to the Missouri, our hemlock, now waste, would compete for the box market of the middle west, and fire risk to standing timber would be largely reduced and the product of each acre of our timber land largely increased.

"We are safe to say that this small concession of a forty cent rate would yield to the railroads hundreds of millions of dollars in gross earnings in excess of those they will receive from our timber at the old rate of freight and the advance they now have, if allowed to stand through the years, would destroy hundreds of millions of gross receipts that would come to them under freight rates as they have been for the past 14 years.

"The San Francisco boom condition lasted about one year. During this period of high priced logs and lumber, new conditions prevailed in our woods. Trees were cut lower down; all the trunks were taken for logs, and the best of the hemlock found ready sale at a less price. An acre of land yielded, therefore, as never before, and our estimates increased as well as our stumpage value. At present the stumpage man still holds his estimates and price, but the logger and the mill man have dropped their profits or gone out of business."

It is only the higher grades of lumber that are shipped east. As a result of the advance in the freight rate, we should have to advance our grades to meet competition in the same market and the forest waste would still further increase, and that would have a very great tendency to fire, the tendency to fire is somewhat proportionate to the amount of debris there is on the land. If there is a great amount of debris, then the fire becomes excessively hot, and if it does it reaches the tops of our green timber, and having once gotten to the tops of our green timber it will go through the forest like a hurricane, but as long as the fires are under it, simply creeping along the ground, they do not rea high timber, and do not run in green timber.

I do not think the lumber can move on the advanced rate. Our lumber meets a competitive price in every market. The two lumbers go together as the tide goes and comes, one is in the ascendency today and the other is in the ascendency tomorrow. Handicap either one of them and it disappears from that market. There is no place we sell any of our lumber that is not in active competition. The lumber we ship out goes mostly east of Chicago, and wherever it goes it is in competition with the lumber from the south and also with the pine of the middle west and the California pine.

The average profit on all lumber manufactured in our mills, from the year 1899 to 1907, has been $1.60 from the log to the shipment. I estimate that to be about $2.50 per thousand feet from the 500,000,000 feet of timber of the west. If we absorb the advance in rates it would more than wipe out all our profits.

All our logs are bought in the open market, and we add to that the cost of manufacture, the cost of insurance, which with us has been very little, as we have not carried very much; there is no interest charged against it, there is no depreciation charged against it. We have considered that the repairs and improvements which we put on our plant year by year have offset depreciations.

We are favorably situated for both rail and water transportation. If the price of lumber were lowered so we would have to take less for our lumber, and every other mill up there would have to take less for its lumber, I do not think the price of logs would be lowered, and for this reason; the logger is not the man that owns the timber, and neither is the mill the party that owns the timber. I say that in a general way. The statements I have seen are to the effect that 65 per cent. of the mills

own no timber. Now there is a very small proportion of the loggers that own much timber. The large areas of timber are in the hands of eastern capitalists, who know its value and will not reduce its stumpage price to meet any whim of the railroad, or whatever else it may be that wants something cheaper. They will hold to their price until such time as they can get it by way of shipment to the Panama Canal or otherwise.

Our profits were less in the years 1906 and '07 than they have been in any other years except one. There has been one year when we made an actual loss. There comes in the increased price of logs which has been excessive and a very great increase in the price of labor. Other conditions may enter into the matter and be factors in determining the question, such as carrying over a larger stock of lumber.

It would seem that the cry that the railroads have made that increased cost of labor and merchandise justified an increase in the cost of transportation had come to an end with the change in conditions. It would also seem that the laws that we have enacted, cutting off railroad passes and the fact that there have been increases in the minimums, and the fact that there have been inventions for the safety of their plants and equipment and many devices for the better management of their roads, all would tend to reduce the cost of transportation. The straightening of their road beds, the laying of heavier rails, and the reduction of their grades have also decreased the cost of transportation. The increased quantity of material they carry in each car; and the increased number of cars they take in their rtains, and the increased capacity of their locomotives have all reduced transportations costs; and when you add to that the fact that the western lumber men have stood ready through the years to load every car to its full capacity for east bound freight, it seems to me that the cost of transportation should have very materially decreased rather than increased during the years.

Spruce is used for a different purpose from fir. It is a wood free from pitch, free from odor and is used to work into doors and sash, and also into boxes. It grows the same size as fir. We do not cut it into large timbers which sell in competition with the fir timber to any extent. We have cut clears that were long for the building of hollow spars for yachts. Most of our spruce is cut an inch and a quarter and an inch and a half and two inches in thickness, for the eastern trade. What we sent east is dressed and kiln dried. We do not cut any of these large timbers which we send east. We come into

competition more particularly with the California pine, and the pine from Montana and Idaho. The California pine with which we come in contact is along the Sierras, in Northern California, and up around the Shasta region. A good deal of our lumber that goes by rail, goes through to Towanda, and some of it, the higher grades, goes as far east as Springfield, Massachusetts. It is not used for cabinet purposes or for inside work to any great extent. Most of it is used for doors or clapboards, or double siding for the outside of houses. We make the clapboards and sidings out there. Our shingles are made of cedar.

Cross-Examination.

If these rates are maintained we will in the main be unable to continue shipments to the east. Our shipments in 1900 were 17,000,000 feet. In cars that amounts to 1026 cars. In 1901 there were 14,000,000 feet. In cars they amounted to 865 cars. In 1902 there were 23,000,000 feet, 1342 cars. In 1903 the shipments were reduced from 23,000,000 feet to 14,000,000 feet, and from 1300 cars to 725 cars, on account of the car shortage. In 1904 there were 10,000,000 feet, 498 cars. It was very largely spruce, but not entirely. We shipped some fir timber and some fir lumber. At that time spruce took the same rate as cedar, and it was reduced to the fir rate in 1905. That did not have a great deal of effect on the movement of our spruce, because we did not get cars. If we could have gotten cars we should have reached competing territory and have been obliged to reduce prices correspondingly, but we got so few cars we did not get any advantage from that production to any extent. It was expected that we could put our box business, our box material, in the eastern markets, but we never got cars to do that.

In 1902 the rate on spruce to Chicago was 60 cents, and the rate under the present tariff on spruce to Chicago is the same. I should say the competition in 1902 was about the same as now. There are several reasons why we cannot ship 25,000,000 feet on a 60 cent rate to Chicago now, though we could do so in 1902. The prices are adjusted and balanced in the Chicago market or wherever it is, on present conditions. The moment you handicap any of these commodities with an advance in freight rates, just that moment you force it out. Some of this spruce goes to Towanda, New York. That goes by way of the lakes in part, and part all-rail. We never have shipped any by water around the Horn. There was a fair

profit in spruce shipped to Chicago, paying a 60 cent rate in 1902, much better than at any time since. The demand is the same now as then, but we have not been able to supply any of it to speak of. We made the most money in 1902. In 1904 there was a general falling off in business. I joined with the other lumbermen in Washington in the request for a 40 cent rate to the Missouri River. The general impression was that a 40 cent rate to the Missouri River would be greatly to the benefit of the railroads and of the lumber men as well, and I still think so. There were quite a number of mills idle in 1904. I hardly think more than half. We have never shut down. We are not shut down now. The shingle industry has been in such a condition this year, because of car shortage, that it is hard to judge. If you will supply empty cars, as it has been in some years in the past, shingles will take a nominal price, a price such as would be expected; but this year they have been bidding for shingles until almost any price could be obtained if a carload could be delivered to them. I think this rate would affect the shingle industry, but not as much as it would affect the lumber business.

I should say the prices for shingles for the last few years would run from $1.40 to $3.60. They weigh 160 pounds a thousand. We dry our shingles down to 160 pounds. After that they deteriorate in value. Some dry them to less than 160. I think a good many dry them to 150, and some of them talk a good deal lower than that.

Most of them go to the Missouri River, except those that go coastwise. During the past four or five years we have shipped more coastwise than east. An advance of eight cents to the thousand would have its effect on the movement of shingles. I do not think it would knock shingles out of the market. Our competition in shingles is the redwood shingles of California, and the cypress shingles are competitors to some extent. Some of the Washington and Oregon shingles went to Texas this year by way of California. The shingle mills generally have shut down for a short time every fall. There is frequently a petition circulated among the shingle men to the effect that they will agree to close down at a certain time. That petition is circulated among the all-shingle mills. We are a shingle and a lumber mill. The combination mills seldom close. There has been an agreement among the shingle mills to shut down at times. These shut downs have had this effect: during the winter months there is a period when there is very little demand for shingles, and if the mills continue to

run and stock up, their big stocks become a menace to the market, and reduce prices in the spring, or that situation is taken advantage of by some of the jobbers or brokers; whereas, on the other hand, by manufacturing only during the months that they are selling they can keep a price that allows a margin of profit, perhaps.

The price of shingles can be controlled at least to the extent of eight cents a thousand I suppose by this joint action on the part of the shingle manufacturers. Sixty-five per cent. in number of the mills do not own their own timber. Our shingles that go to Texas are shipped to California by water. They pay the rail rates from San Francisco. The ordinary cargo rate from Gray's Harbor to San Francisco has been ten thousand shingles to one thousand of lumber, and of late it is $4.50 a thousand; that would be forty-five cents a thousand for shingles. Shingles of course have been abnormal this year, owing to the fact that cars could not be obtained to give the eastern market its supply, consequently we have done things that we never could have done before. We never before could have shipped shingles to San Francisco and then reshipped them to Texas. I think there is considerable competition between cypress shingles and our shingles.

There has been a reasonable profit in shingles; that is all. No more profit than you would want in the railroad business. The average profit we made on our shingle business has not been much in excess, if any in excess, of ten per cent. on our investment. It has never been a profitable business. This last year we would have made a lot of money on shingles if we could have gotten cars to ship them, but they were of no use at three dollars a thousand if we could not get a car to ship them, so we sold them for two dollars a thousand. The same thing was true in 1906 to quite an extent. We have not had plenty of cars since way back in 1902.

We have always bought our logs; never did any logging until this past year. We began about a year ago. Logs got up to ten dollars and we put in a camp. We buy our logs at the mill.

The articles which I read to the reporter consists of copies of articles and addresses which I had made and published. It was my judgment at the time that that conservatively represents the situations. There has in a way been a reduction of the cost of saw-milling. We save material by changing machinery; that is equvalent to a reduction in the cost of manufacture. We have improved machinery which results, to some extent, in

the reduction of the cost of manufacture, and in those matters we have, to some extent, offset the advance in the price of labor. The actual results of the year 1907 with us have been a profit to date of 17 cents per thousand feet, while there have been years when we ran up as high as $4.00. There were depressions in the lumber business at Gray's Harbor prior to the car shortage. And to which I refer. These depressions seem to run in cycles to some extent; and that was long before we had any railroad. Our shipments now go all over the coast. Our fir stuff coastwise and foreign and eastern.

I first went there in 1882. In that year prices were high. Since then we have increased the quantity very materially and now we ship more than we used to. We shipped nearly as much in the first six months of 1907 as we did in the entire year 1906, coastwise from Gray's Harbor.

The mills went into the year 1906 with orders on hand and before they got squared around in good shape, prices went off again, so that many of the mills made very small profits in 1906.

We shipped 24,000,000 coastwise up to the first of November, 1907. During the year 1906 we shipped 26,000,000. We shipped very little in the month of October, 1907, and the San Francisco market has entirely collapsed. Since way back last April that market has been cut off and it has been continually falling from that time to the present. I have no idea how much we shipped coastwise during the first half of 1907.

The Pacific Lumber Trade Journal is recognized as a very good statistical paper.

We have shipped just about our pro rata during 1907. We shipped 24,000,000 feet in 1907 in ten months, and 26,000,000 feet in 1906 in twelve months. That does not all go to San Francisco. Some of it goes foreign. So our coastwise business in 1907 has all gone to pieces. Prior to 1900, I think, logs sold a little higher than six dollars a thousand in the Gray's Harbor country, but not much. Since then they reached an extreme for No. 1 logs of twelve dollars last year. Their price now is ten dollars, nine dollars, eight dollars and six dollars. Ten dollars for spruce. That is as high as they have been for a long time. Fir is ten dollars today for No. 1 as against thirteen dollars. Six dollars for No. 2 and hemlock. There has been a drop in the price of logs in the Gray's Harbor country of more than three dollars a thousand. In other words, the logger has dropped all his profit and something more. The logger is going broke right now, where he has been making a profit in the past.

The article in the magazine known as The Coast, for July, was written by me.

Mr. Cotton reads from the article as follows:

"Logging by rail is the most successful and most satisfactory and latest development of the logging business. A logging camp now consists of six to eighty men. Oftentime four road engines and a yarder are strung out along a single road and the 'turn of logs,' about fifteen thousand feet, are passed from engine to engine a total distance in place of two miles. The product of a camp is sixty to eighty thousand feet per day. Or ten to twenty million feet per year. Logs average about two thousand feet each, are from twenty to forty feet in length, but sixty, eighty and even up to one hundred and twenty are lengths that can be produced in the woods and sawed by our mills.

Milling.

"The evolution of the saw mill has been quite as great as that of logging. All the first mills built in the west were double circular, lacing in boiler, also in engine capacity.

"The now Northwestern Lumber Company started with two fine boilers, fifty-six inches in diameter and twenty-four feet long. Today it operates sixteen tubular boilers, many of which are twice the capacity of the plant with which they started. Then the saw skurf was one-half inch. That is, if the log was sawed into one inch boards one-third of the log was made into sawdust. Today the saw skurf of our largest band mill is three-sixteenths inch and the saws that cut the lumber into smaller dimensions carry still less skurf.

"In order to handle the immense logs that came to the mill, a device was introduced which consisted of four saws, the third above and in front of the others, the fourth a horizontal saw, but even with these three sixty inch saws we were not able to saw our large logs without chopping and a waste of time. Therefore, a chopper was devised consisting of four knives attached to a square head and driven by power sufficient to cut into the solid log ten or twelve inches. But with all these devices the detention was still great and that, together with the waste, caused the introduction of the band saw.

"In those olden days logs were hauled into the mill with dogs driven into the log eight or ten inches. Today they are hauled by sprokets on the log chain so arranged that when the log is floated into position the sprockets take on the under side of the log and the log goes up the log slip.

"Then the logs were turned with cant wheels requiring the

use of chain. Today the Simondson Turner jumps up through the floor of the mill, grabs the log, turns it down and shoves it back onto the carriage in much less time than it takes to read of its operation.

"In the past logs were set out to the saw with hand set works, often requiring the full strength of two men. Today this is accomplished by steam and the instant the log is out of the cut it is ready for the saw again.

"Then all lumber was hauled down the rolls by man power, shoved along the dead rolls, as we say, while today all the rolls in the mill are live rolls, and when the lumber falls it speeds away to its next machine. All lumber was trimmed and slabs cut with swing trimmers by hand, no such things as an automatic trimmer or slab slasher being known.

"In those days lumber leaving the mill was shoved out the end or side of the mill down an incline into skids. There it piled up into a mass that could only be untangled by main strength. Today it goes onto a sorter, where one man puts a grade mark on every piece and other men take the lumber from the sorter and put it on a truck for its proper destination.

"Today from the time a log is floated onto the log slip, until the lumber is ready to load on trucks, no man lifts a board.

"All lumber was worked green. The California market required nothing else. The climate in that section of the country was sufficient of a dry kiln and the people were educated to green lumber.

"With the coming of the railroad to Gray's Harbor there came a demand for lumber to be shipped to the east, and that brought about the necessity of dry kilns, planing mills and the air drying of lumber. This is the process of the present, with the exception that transportation does not afford shipping facilities sufficient for much of our product, therefore, coastwise and foreign markets have to be reached in order that our mills may operate.

"We are entirely dependent upon the Northern Pacific for rail transportation, and find ourselves badly handicapped. With the extension of the Southern Pacific and the Milwaukee to our territory, we have to be better served and to have full access to eastern markets.

"Shipping.

"The evolution of transportation falls but little short of the evolution in logging and milling. When the writer first began lumbering the capacity of our largest vessels for coastwise

shipment was two hundred and fifty thousand feet. When lumbering began on Gray's Harbor a sailing vessel that would carry four hundred thousand was about the limit except that for the Sound trade full rigged ships, condemned for grain, were placed in the lumber trade.

"Then they began the construction of a fleet adapted to coast ports and ideas rapidly developed until vessels carrying a million feet on eighteen feet draft became more or less common. A little later the steam schooner crept in and was found adapted to coastwise shipments. Later the discovery of oil in California gave the steam schooner a stride ahead. By burning oil their radius was increased and their fuel consumption reduced. Today a large proportion of the product of the mills is carried coastwise by steam and sailing vessels are to some extent relegated to foreign shipments.

"No article on the lumber business would be complete with referring to the ups and down of the coastwise market in the years that have gone.

"The range in the price of lumber in San Francisco prior to 1900 was from eight dollars a thousand when times were at their worst, to twenty dollars when times were at their best. In both instances for common rough lumber of ordinary lengths.

"The policy of the San Francisco lumber dealers was to prevent the starting of new mills, and whenever mills started in such a number as to menace the California market it was customary to drop the price to actual cost of production. Unless a mill were provided with every facility, timber, camps, mill, vessels, San Francisco yard and abundance of means, it had to suspend business or go to the wall. This process of extermination would go forward for a period of about two years, then the third year the mills would combine, price to be advanced and handsome profits made, but at the end of that year there would be new mills started and the process repeated. Thus the lumber business ran in cycles of about three years, two of these three years were years of distress, while the third was one of prosperity.

"The price of logs in those ancient days was often as low as four dollars per thousand feet and I think never reached six dollars except for one period prior to 1900.

"With the coming of the railroad and the opening of the eastern market new conditions came into the lumber business, and a greater permanency was added to values. So, too, with the coming of the railroad, came the eastern successful lumberman who had seen the evolutions of the lumber business in

Michigan and Wisconsin and believed those same changes would come about in the west. Therefore, he bought timber lands and with the control of the timber lands came the control of the lumber prices.

"In the past the timber owners sacrificed their stumpage, loggers their profit, millmen their profit, and vessels their profit whenever California chanced to be short of a crop or the consumption of lumber became a little slack. San Francisco dealers, too, always insisted upon their own tally and inspection, which in many instances were a little short of confiscation. Through these long periods the San Francisco dealers ruled the mills of the north with rods of iron. It is therefore with much satisfaction that we see those same dealers submit to northern inspection and northern tally, see them paying a fair price for that grade of lumber which is suited to common building purposes and which they for many a year took pleasure in designating as 'refuse.' We sincerely hope that time may never come again when those dealers will dictate to the mills as they did in the eighties and nineties.

"In 1882, when the founders of the North Western Lumber Company built the first mill on Gray's Harbor, all lands west of the Northern Pacific grant were offered lands, for sale at $1.25 per acre, without restriction as to number of acres. Today those lands are worth from $1.50 to $3.00 per thousand feet of their standing timber, often from sixty to one hundred and fifty dollars per acre, or from fifteen to thirty dollars per tree.

"In 1882 the shipment of lumber from the Harbor was about five million feet. Today it is the largest lumber producing point in the world, cutting about two and one-half million feet of logs each day of ten hours into lumber and shingles.

"Then San Francisco was its only market. Today its products reach all parts of the world."

That substantially states the changes of conditions which have taken place from the eighties and nineties to the summer of 1907 as accurately as I could state it.

Our fir market to San Francisco has been the only market we have had access to in any quantity in late years, and practically during the entire period from 1900 to date, the Gray's Harbor output and Shoal Water Bay output has been ocean-going to a great extent, so far as fir is concerned. The stuff we have sent east has been the high grade materials. We have gotten good prices for it. The greater portion of our product is going coastwise from the mills on the Harbor.

There are mills on that Harbor that have no preparations made for the eastern trade. Those that have those preparations find the eastern market the better if they can reach it. For instance, our product for the last nine years has been divided almost equally. In the one year, when there was an abudance of cars, the eastern trade very much exceeded the coastwise trade. Other years when we have not been able to get cars, the coastwise trade has exceeded the eastern trade. I am talking about fir and spruce both. We have always shipped the better grades of fir east if we could. Got better prices there or we would not have gone east. We could always sell our common stuff coastwise for some purpose and at some price. Our coastwise business now has gone to pieces. The San Francisco boom is over. The labor troubles down there have interfered very materially with building. The new yards are all stocked, and the result has been that, beginning with April the coastwise orders have fallen off until they are virtually nothing. On the railroad business, we have had no orders since along in September. They quit then when they found that they were up against the question of absorbing the additional price. We had all the eastern business we could possibly handle until September.

We have turned down during the year thousands of orders for the want of transportation. The California pine and the Montana and Idaho pine have come in, in greater quantities of late years than the white pine did. The result is that our competition is stronger and heavier today than it was then, with the pine situated farther east than ours. The pine in Minnesota and Wisconsin, I think, is greatly reduced in quantity now. I have understood there was a slump in the yellow pine market.

Redirect Examination.

The reason why our orders ceased in September was that about that time the rate was so well established or promulgated that we advised our eastern buyers they must absorb the advance. The coastwise trade has also gone to pieces. It always follows as a necessary result that if one market goes off, its products are forced on other markets, so that a great deal more lumber is shipped coast-wise when the eastern market goes off than would otherwise go there demoraliz-

ing the coastwise market, as the eastern market was already demoralized.

In saying in my direct examination that we could not meet the competition in Chicago and other eastern markets under these advanced rates, I referred to the prices as they were at the time the advance was made. Our cost of production has not been materially reduced. We made $1.60 profit on an average. We could not retain the eastern trade and meet the competition under the advance in rates, because the advance was greater than our profit. If the market at Chicago and the east goes off from $4.00 to $7.00 a thousand, it would become, of course, impossible to meet that competition.

Our figures showed a large shipment for the first ten months in 1907. That is explained very largely by the fact that we had received California orders in 1906 which were worked up in 1907. The month of January, 1907, was the very top of the market, and the very top of the demand. We continued operating our mills into the Autumn of this year on orders which we had received prior to the agitation and announcement of this rate. We shipped out on old orders up to September. We have received some cancellations of orders this Fall. It is much more difficult and expensive to manufacture shingles in winter owing to the climatic conditions, than in summer. They are subjected to an extremely great amount of rainy, cold, damp, unsatisfactory weather that is not adapted to shingle making. The closing down of the shingle mills for the winter is due to climatic and season conditions very largely, but not entirely so.

Prepared roofing is going to take the place of shingles in the eastern markets, at the price shingles have been ruling. I do not think we can find a market in the east again in competition with the prepared roofing. If we add to the price of shingles in the past, the advance represented by the advance in rates, I think it would very materially affect the shipment of shingles to eastern states.

J. H. BLOEDEL:

Reside at Bellingham, Washington, which is about one hundred miles north of Seattle and about twenty miles south of the Canadian boundary line. It is in the northwestern section of the state of Washington, in the northwestern county, county of Whatcom. We have tidewater at Bellingham, and

have the Great Northern, Northern Pacific and the B. B. & B. C. Railway, which connects with the Canadian Pacific Railway at the boundary line near Sumas. I am connected with the Larson Lumber Company, manufacturers of lumber in that territory. We have several mills, two saw mills, sawing fir lumber and also some shingle mills. One of these shingle mills is at Bellingham, the other at Belfast, about twenty miles south. We have no water transportation at Belfast. Our saw mills are located on Lake Whatcom, three or four miles inland away from salt water, not in the city of Bellingham but just outside of it. We have not the direct advantage of shipping by water from those mills. We can ship by water by first transferring onto rail and taking the lumber to tidewater and then transferring it, but it is an expensive process. We do not ship by water to any material extent. We find a market for our products almost exclusively in the middle east on a forty cent rate. We sell a part of our lumber in Canada, by exporting it into the northwest territories. We sell a large part of our lumber in North and South Dakota. We sell some lumber in Minnesota and some in Nebraska and Iowa, and some for delivery at Duluth and Ashland, and some in Cleveland and delivered by means of the rail and lake route; and then the other products, shingles, have been shipped all over the middle section of the United States, and quite a few have gone through to New York. We have a sales department elsewhere than in Bellingham, one in Minneapolis, a regular sales office, and we have agencies arranged at different points, one at Winnipeg and one at New York. Our investment in saw mills and shingle mills is close to half a million dollars. We have a logging company which was the predecessor of the lumber company. That has been in existence for a number of years, was organized prior to the lumber company. That has an investment in timber lands. That company owns timber lands and logging railroads and conducts a regular logging business. It sells logs, has done so right along since its incorporation, and has sometimes bought logs and has bought and sold lumber when it could do so to advantage. It sells logs in the open market.

I have been directly engaged in the logging and manufacturing business since 1898. I was, however, directly engaged in logging and timber interests here in 1890 when I first came to Puget Sound. I was then in the logging business for the matter of a year or more, and subsequent to that

I kept in very close touch with the logging interests, as I was interested in a small concern, and bought and sold logs during the hard times when we had to facilitate things as best we could. In other words, I have kept in close touch with the logging and lumber business ever since 1890, although there was a period of about six years that I was not actively connected with it directly. I was in Bellingham in the spring of 1893 before the Great Northern Railway was built in there. The rates about that time and prior to the spring of 1893 from Bellingham and the coast cities to St. Paul and Minneapolis were 55 cents per hundred pounds. The Northern Pacific was not then operating from Bellingham. I think we had rail connections with the mill then by way of what was called the Fairhaven and Southern, and later became a part of the Great Northern System. I think it was one of the first lines owned by the Great Northern Railway. They owned that before the line was built through, and that connected Bellingham by rail to Seattle and the B. B. & B. C. Railway connected with the Canadian Pacific. The Northern Pacific was not in at that time. I had no knowledge of shipments at that time.

Fairhaven is now part of the city of Bellingham. It lays just alongside of it and was later incorporated in it. I was not present at the Fairhaven Hotel on Thursday evening September 10, 1891, at a dinner that was given to Mr. James J. Hill. I was present at a reception that was given him. I did not know that there was a dinner then. There was a reception on that occasion. I recall in substance that Mr. Hill made a speech regarding lumber rates from that territory to the east. I was one of the reception committee which entertained Mr. Hill. He had been to a dinner before he made these remarks. I did not get in on the dinner.

Counsel for complainants thereupon read to the witness from a published report of the speech of Mr. James J. Hill in the Bellingham paper of that date, which is as follows:

"As far as turning your forests into a direct source of wealth by converting them into lumber and exchanging it for gold is concerned, that is naturally limited, as it has been, to the market you could reach by the ocean. Before building or extending our lines of railway it has always been our custom to examine every visible source of tonnage, or the soil that would produce tonnage, if brought under the influence of intelligent effort. And in coming here I assure you

that before we made up our minds to build to the Pacific Coast, we also made up our minds, as far as we might with all the information we could then get, that our enterprise would be a failure unless we could successfully and profitably carry the tonnage produced in the country to a market. Now I know that we will be able to carry tonnage produced from the manufacture of your enormous lumber resources to a market, not only to the prairies between here and the Mississippi river, but to the lakes and over the lakes to the New York canals, where they may be distributed to everybody's door. There is no reason in the world why the lumber from the Puget Sound region will not successfully compete with that heretofore supplied from Wisconsin, Minnesota and Michigan. As soon as our line is completed we expect at once to carry that lumber, if you please, to Buffalo and Black Rock, where it is distributed over the entire East. And I hope that we shall not be disappointed in finding the lumber to carry. The trees are here, and the climate and weather are both reasonably comfortable to enable men to do good day's work, and I know of nothing in the world to prevent our carrying that lumber, except that somebody must make it. We can not carry logs that far."

Continuing, the witness testified:

I remember that speech and this extract. Following that the rate of forty cents was put in. That rate had been in effect about five years when I became interested in the lumber business. The existence of that rate, and the fact that it had been in effect several years, and the further fact that I had heard Mr. Hill's announcement on this occasion entered greatly into my consideration when I made my investment. I have made recent investments in mill properties in my neighborhood, an investment in the mills in the fall of 1906. We started to build a mill, because our capacity had been insufficient to take care of the orders that we had. We completed that mill in July, 1907. We were in doubt as to whether to put the mill on an exclusive rail point, or to put it on a tidewater point. We had an option on a site at Bellingham that would have given us a tidewater outlet. At that time the car shortage was a very severe matter, which would induce the location of a mill at a point where you felt that you could ship your lumber either by water, or on account of having enough competitive rail facilities. I talked with Mr. Campbell, who was then traffic manager of the Great

Northern, and he asked me to put the mill at a point on Lake Whatcom where the other was, if we could otherwise see our way clear to do so. My partner talked with Mr. Leedy of the Northern Pacific, who also assured him that the car supply would improve; that they desired to have the mill on the rail lines rather than on the water lines, or rather than subject to water shipments. I also talked with Mr. Peters of the Canadian Pacific Railway, and he assured me along similar lines. Had there been at that time any question about the rates, I would not in any way have encouraged my partner to invest the money in this mill. There was nothing said about the rate one way or the other; it was largely a question of car supply. But the inference that we had, from doing business on that rate, a matter of about thirteen years, was that it would be reasonably continuous, and on that assumption we built the mill. We began operating it on July 25th, when it was completed, and we closed it about September 5th, for want of business. This was in 1907. The investment is about $200,000. It will require a little more money to establish dry kilns and other facilities. The saw mill itself was complete. We feel that we made a foolish investment, in view of the raise. It is one that will now depreciate, that we will have no use for, until the conditions in the lumber business change radically.

Our other mill is not running. Those mills were closed for want of business and because we have for some time been unable to get any orders for future shipments. We are always required to have a number of orders on our books. It is necessary to have anywhere from one month's to six months' orders on hand in order to lay your plans for getting timber and for buying timber and for doing other things which are necessary in laying out your market lines. We have been able to get no business since about May or June, 1907. Business dropped off materially in July, very much more so in August, and practically none in September, and from that time on we have had no business offering at all. Prices do not seem to cut any figure.

In a general way I am familiar with the figures relating to the State of Washington as to the investment in lumber enterprises and the number of people depending on it throughout the state. There are, I should judge, about 450 shingle mills in the State of Washington. I must explain that these shingle mills are not as large as the average saw

mill. The average shingle mill will employ about twenty-five to fifty men. In addition to the 450 shingle mills there are about 500 saw mills in the state. There is possibly a total of 1,000 mills in the State of Washington. Now as to the capital employed, I am unable to give definite information except in a general way, and this information is gathered from the records of the Pacific Coast Lumber Association and others. I judge that the total investment is about $100,000,000 in the lumber industry in the State of Washington. That implies or includes that portion of it in Eastern Washington, which is hardly a fir producing country, but is still in the state. The number of men employed are probably between 90,000 and 100,000. That would average possibly close to 100 men to the plant. Now, the average shingle mill will not employ as many as that, but many of the saw mills employ two or three hundred men, and quite a few employ from one thousand to two thousand men in all their operations. This employment of men includes the number of men working in the mills, in the camps, and on the logging railroads, in other words the business that is directly in hand with the lumber business.

The annual output of the State of Washington is about four billion feet. I have heard the value of the lumber stated as high as $85,000,000, but my own figures have been a little more conservative. I think it is in the neighborhood of from $72,000,000 to $75,000,000, which is the value of the output. I could not say as to the annual payroll. It is a very large one, of course. There are one hundred thousand men engaged in the industry. I should think the annual payroll was $60,000,000 a year or more than that. I cannot tell you the amount paid in freights on lumber shipments from the State of Washington annually. To our industry as we have run along for the last three years the advance in rates represents about $2.80 a thousand on an output of close to thirty million feet, which would be about $82,000 a year. That would be the amount on the product we have already manufactured. If we had a market for the product from the new mill, we believe it would add about $150,000, and would be at the rate of about $200,000 additional freight. That is roughly speaking, estimating the amount. That advance in rates would affect our business very considerably. As I have stated, our lumber goes almost entirely into a territory where we pay a forty cent rate. We come into competition in the United States there with the products of the northern states.

They are shipped into the same territory that we ship into on a rate of from 10 to 15 cents. We come into competition with yellow pine also, which is shipped into the same market at a rate of all the way from 19 cents to 40 cents. We have been shipping lumber into this section of the country very largely (indicating on the map). Our largest product has been into the North and South Dakotas. We have been shipping that on a 40-cent rate. We are able to compete on a 40-cent rate, with white pine, or the products of the northern portions of Minnesota and Wisconsin, on their 10 to 15 cent rate, an average, I think, of about 12 cents.

We are able to met competition from the south, from the yellow pine district, on a rate of about 34 cents. We will take this for an example, from the great number of different grades of lumber. There are a great number of different grades of lumber, as the Commission have no doubt learned by this time; but taking the common grades, that is, our house building lumber, which we will accumulate—we endeavor to make as much clear, which is high priced, and as much long and large stuff, which is higher priced, as we can; but in the manufacture we get a lot of short stuff and a lot of common, or stuff that we make into common boards, or common sidings, or two by fours, or two by sixes. That is a product which nearly all mills make in large quantities. It is stuff that is the result of manufacture of the higher grades of lumber. Now, on the basis of that material, taking two by six, for instance, which is the lowest priced lumber that any of the lumber manufacturers furnish, on the basis of a 40-cent rate, we can deliver that for $23.50. The white pine people from Minnesota and Wisconsin have been shipping lumber into that district and paying only about 12 cents, and selling their lumber at $23.50. In other words, their lumber brings more money at the mill than ours does.

The yellow pine people in the south have been sending it in and delivering it on a 34-cent rate, for $23.50.

Now, on other grades, for instance on the two by twelve, 26 feet long, which is a longer length and a material which is harder to get in white or yellow pine, that is worth from the coast about $27.50. That we can deliver into the territory that the yellow pine people have a 19-cent rate to. In other words, their price is so high at the mill that they ship it at a shorter rate than we can ship into that territory.

Now, take for example the upper grade flooring, we can

take a number two item of flooring, which is equal to the A-grade of yellow pine, and we can ship that on a rate of forty cents as compared to their rate of twenty-six cents.

I am choosing those three for example, and for the purposes of illustration. Any other grades along the lumber lines will answer for similar purposes. They are all different. In our coast business we aim, of course, to get as long lengths, as much as possible, and the larger sizes, as much as possible, when the tree will make it, because that has the least competition in the other markets. The short lengths and the small sizes we meet in competition all over. There are native woods in Colorado, and even in Dakota, that compete in those items. On the long items we want to reach as far a market as we can, in order that we may sell our small dimension stuff at a low price, so we can dispose of the product of the entire mill.

Now, the result of this rate advance will be that it will put us at a disadvantage in the territory that we are now shipping to, and competing with white pine from the north and yellow pine from the south, at least ten cents per hundred pounds. In other words, if the white pine rates and yellow pine rates were raised ten cents, we would be on an equal basis with those woods, and it would then be a question of the consumers standing the burden. But that is not the case. Their rates are not raised, and our territory will be very much contracted. Now, under this new schedule, if we are obliged to pay fifty cents instead of forty cents, white pine will then be able to go as far back on the Northern Pacific Railroad, I think, as Dickinson, or somewhere about there, and on the Great Northern Railroad as far nearly as the Montana line. In other words, white pine competition can drive us back from the market which has been a great market for at least the firm that I represent, and I think for other mills similarly situated. It is possible that that might advance the price, but they have that feature in their business over us, which is a considerable advantage.

Yellow pine is in exactly the same shape, so that they can get into territory in South Dakota, Southern Minnesota, and further into Nebraska than they could heretofore, because our rates will be fifty cents as against their former rate of thirty-four cents. In other words, they will be able to ship to points where their rates are forty-four cents for yellow pine instead of thirty-four, and white pine will be able to ship to points where the rates are considerably higher.

The Canadian Pacific Railway begins at Vancouver, British Columbia, and runs through the mountains, going to Winnipeg and further east, and also Manitoba generally. It has a connection on the American side into Bellingham, over the B. B. & B. C. Railway, and also I believe is under contract with the Northern Pacific Railway at Sumas into Seattle, so that they are enabled to get shipments into Seattle and out of Seattle via the Northern Pacific at Sumas, and into Bellingham and out of Bellingham via the B. B. & B. C. into Sumas. The Canadian Pacific for a number of years has had a rate of forty cents into this territory here (indicating), Winnipeg, Emerson and Manitoba points generally. From Vancouver to those points the forty-cent rate remains unchanged. That is the same today, so far as my information goes. I don't know whether the Canadian Pacific has rates in connection with American roads, but I do know that another road, the Canadian Northern Railway, has a tariff with the Great Northern Railway from Vancouver, Washington, via this line across the continent, through Noyes into Winnipeg and to Manitoba points generally at forty cents, and that is in effect today. The Canadian lines have joined in these rates in the American territory, and the American lines have joined with the Canadian Pacific Railway into Canadian territory, but the Canadian Pacific Railway retains the old tariff, which has not been changed within Canada. The arrangement is that if it comes into the American Pacific territory, the rate is a fifty-cent rate, and if it goes through American territory back into Canada, it is a forty-cent rate. In other words, a shipment originating in British Columbia and coming over the Canadian Pacific Railway into any town in the United States, takes the same rates as the American roads have put into effect November 1st; and on the reverse shipment, originating in American territory and ending in Canada, that takes the same rate as is put into effect by the American roads in the United States; but a shipment beginning in Canada and ending in Canada takes the forty-cent rate, either by the Canadian Pacific Railway or the Great Northern Railway.

The route by the Great Northern is from Vancouver, British Columbia, to Everett, and then east over the main line of the Great Northern to a point about here (indicating) and then on north through Noyes and into Manitoba distributing points via the Canadian Northern Railway. That is the route.

In addition to the former rates being retained, the old or former minimums are retained on the other side. The minimum is 30,000 and 40,000 pounds, which is the same as we had in effect on October 1st, 1906.

In addition to that there is an allowance of 1,000 pounds made for moisture, due to snow and ice, for the six winter months, I believe, and 500 pounds in the six summer months. That moisture allowance is $4.00 per car for the winter and $2.00 per car for the summer. That is not the case on the American side. None of the American roads make that allowance or ever have, so far as I know.

The Canadian Pacific Railway is built through a heavy mountainous district. The first 500 miles of its track out of Vancouver, between Vancouver and Calgary, is one continuous or generally continuous mountainous stretch of country, where the grades are heavy and the curvature is sharp. At one point in the Kicking Horse Pass the grades of the Canadian Pacific Railway are four and one-half per cent. The American lines, on the contrary, I believe, are limited to 2.2 per cent. miximum grade. If there is anything heavier than that, it is a very short and inconsequential place. Their standard mountain grade has been 2.2 per cent., and that I know in many cases, especially on the Great Northern lines, has been reduced.

The standard roadbed is far superior today on the American side and the general character of the country is easier and cheaper of operation than that on the Canadian Pacific.

Referring again to the joint tariff from Canadian Pacific points through the United States into Winnipeg and points in that territory, the witness testified:

I have been informed that there has been an actual movement under that tariff and over that route. My information is from the shippers in British Columbia, who speak of that route and say they are shipping over it, and also some of the traffic officials in that line of business, who keep track of those things. I refer to a tariff dated August 28th, 1906, which is a joint tariff between the Great Northern Railroad Company and from Vancouver, British Columbia to Manitoba points, via the Canadian Northern Railroad, and, I believe, its own lines—it has some branches there. This tariff is on file with the Interstate Commerce Commission. My attention was called to it the day before yesterday and I went to the Secretary's office and found the tariff on file there, and it had

not been revoked at that time. No notice had been given of its revocation.

I have been exporting lumber into the Canadian northwest. We ourselves have been exporting lumber from Bellingham via Sumas and off into territory known as the Canadian Northwest, into the Saskatchewan territory and into Manitoba points near Winnipeg and into Manitoba generally. There is quite an exportation there outside of their own, that comes from various points in there. We export both grades of lumber, both common and some upper grades. Probably more of it is common grade lumber than there is of the upper grades. This advance in the rate would absolutely kill that export trade, because under the new tariff the rate from Bellingham or any points on the American side of the line into any point or points in Canada is raised ten cents, whereas the Canadian Pacific does not raise its rate, just over the line, and our competitors are the mills along the Canadian Pacific line, the same general districts. In other words, this is all a lumber producing district, both in British Columbia and the United States, and the lumber which is produced up there is similar to ours and it goes practically into the same market, so when our rates here are raised to fifty cents a hundred and theirs are not raised, the same article can be shipped for ten cents a hundred pounds less into the same territory. That is the effect of this tariff. If a shipment originates just over the line on the American side, whether it goes into Canada or goes back after going over the Canadian Pacific, into America, the rate is increased ten cents per hundred pounds, whereas, if it originates on Canadian soil, at any Canadian point on the coast, and goes to a Canadian point it remains forty cents. If it originates at a Canadian point and goes just over the line into America the rate is fifty cents, and also it is subject to new minimums, and subject to all of the conditions of the American tariff.

The minimum prior to October 1, 1906, was 30,000 pounds for Cedar and 40,000 pounds for fir. In other words, that was the load required on any car no matter what the capacity was. If the capacity of the car happened to be less than 30,000 pounds or 40,000 pounds, then the marked capacity of the car would govern the load. In other words, the refrigerator cars would probably take less than the minimum, and some of the small cars would take less than 40,000 pounds. Some time prior to October 1st, the trans-continental lines

promulgated a new market basis, which is figured on the capacity basis. The original basis first presented to the shippers was rather excessive; it was rather more than what the average car contained, and upon conference and talk we had, as a result of the talk between ourselves and the railroads, we finally agreed so that the minimums were raised to a point where the car was required to be loaded to the visible capacity only, and up to the new minimums if that could be done by loading the car to its capacity. It was a cubical minimum, and from that was deducted a weight basis, which was graduated so it would run, say, from 40,000 to 60,000, according to the cubical capacity of the car. A car, say, 60 feet long, eight feet wide and nine feet high, would figure a certain cubical capacity, and on that cubical capacity was based the weight it should contain, and on that weight we would have to maintain our minimums. I made the figures on that capacity in our own case, and I have one or two others. There were figures made in some other cases, but in our own case, in which I am prepared to testify, I find that the total weight per car of lumber, loaded prior to October 1st, 1906, was about 47,000 pounds. That the gross weight, that is, the weight of the car itself, was about 32,000 pounds. I think it was 32,008, to be accurate, and that the total weight of tare and cargo was 79,000 pounds. After October 1st, 1906, to the date when we ceased shipping, some time in October, 1907, the average weight per car was 54,000 pounds. That increased the cargo in each car 16 per cent. over the former load. The tare of the car has not increased. I think it is a matter merely nominal, a matter of a few pounds. So that the average load of tare and cargo, had only increased about 6,900 pounds or 7,000 pounds. The average car's load had only increased 8.8 per cent. In other words, if a cost basis is figured on, a ton basis—in other words, a cost per ton per mile—the cost of moving that car had increased 8.8 per cent., and the cargo or the freight, being a portion of the car, had increased 16 per cent. So that the difference of earning on that car, or on the rate or on any basis you please to make it was 7.2 raise.

In other words, explaining it in another way, the railroads increased their earnings per car without cost to the lumbermen; but it would have amounted to the same thing if they had maintained the old minimums and raised their rate from 40 cents per hundred pounds to approximately 43 cents and

a fraction. In other words, there is in effect the same thing as a raise in rates.

Now, I want to say that the lumbermen, after they understood it, were thoroughly in accord with that move. It increased the loads per car and enabled us to get a few more cars. Pointing to the percentage that it makes out, I should say approximately nearly sixteen per cent. more cars. This enables us to ship a great deal more lumber than we formerly could.

In making those figures, I do not figure the cost per ton per mile on the heavier load the same as on the lighter load. I merely take it from the cost per ton per mile basis, generally speaking. We were told at the time when this minmum was promulgated that the railroads wanted more cargo without increasing the number of cars, and if they figured the approximate cost of moving a heavy car compared to a light car and found that it was not material, and if they could increase their earnings on a car that way and it was a material point to them, we were willing to concede that. The net result of this increase in minimum has been to increase the earnings of the railroad companies three and a fraction cents, about three and a quarter or 3.2, or something like that a hundred pounds, giving the same revenue as if the rate were 43 and a fraction cents.

I have kept a fairly accurate record of the movement of cars from our point to the points of destination, which were largely in Dakota, and I find that in 1905 and 1904 the average time for moving a car from the coast to points of destination was about twenty days. On the American lines it was about twenty days, and on the Canadian Pacific it was about nineteen days. In 1905 it was approximately the same, and in 1906 the length of time had gone up to 44 days per car from Bellingham, Washington, to general distributing points in North and South Dakota. The length of time was on the slow movement of traffic, and probably the congestion of traffic along the main line of the road. We find that cars were often sidetracked in our yards, and left there for weeks at a time. Train loads were sidetracked along the line at different points, and would be sidetracked for weeks before they were moved through to destination. We had, of course, to keep tracers after our cars and try to keep them moving, so as to get them to destination, as our customers were getting very anxious to either get their material or have their orders cancelled.

It is not true of the Canadian Pacific to that extent. The Canadian Pacific only increased its movement for about 24 days in 1906. The Northern Pacific, I think, was 44 days, and the Great Northern Railroad was 42 days. As I said, the Canadian Pacific was only 24 days in 1906. The Canadian Pacific, perhaps, has been a few days quicker moving the cars right along than the other roads. It has made the best time. I am not able to give competent testimony as to whether that was due in part to a deterioration in the motive power of the American railroads or to the bad condition of their cars, but I think not, however. From my own observation and general reports that have come to me, I think they have increased their motive power. I think they have bought new locomotives and bought heavier locomotives, and they have also bought some cars and heavier cars, and otherwise have improved their equipment.

The effect of this delay retarded our market and interfered with the sale of our product very much. A dealer in North Dakota, who was located within a reasonable rate of the white pine district—I mean at some competitive point—could get his lumber through in three or four days, and he would rather pay as high as a dollar a thousand more for the stock in order to get it quickly than to submit to the delays that he had to submit to if he got his lumber from the Pacific coast. It was not only the time in transit that caused an interference in our market, but it was the actual car shortage, the fact that we could not get enough equipment and satisfactory equipment, so we lost a great deal of trade on that account. I have talked with a great many dealers in the Dakotas at points where they can use both materials, and they have told me that that has interfered with the sale of the coast stock to a great extent. I found that orders began to decline from the territory affected by this advance in the latter part of June and first part of July. We had a large amount of business in the fall of 1906, and were unable to ship it on account of the complete embargo of the northern roads for some 60 days in the winter time, on account of weather conditions, and we were delayed in shipping that, and shipped it after the middle of March, and we were not caught up and ready to take new business until about that time, and when we were ready to take new business it was very slow coming. Through our Minneapolis sales office we made every effort to get business after July, to have more orders on our books. We were about caught up then. As the rate had been advanced at that

time, or it was announced that it was to be advanced, and we had reasonable assurance that it would be advanced, I advised our sales office that all business must be taken subject to the new rate, if we could not ship it before October 1st. The car shortage in the fall is usually very severe. In the summer time it is not so bad. But he advised us that he could not get business with the increase in the rate, that it was hard to get business generally and that there was disquietude in the market and a general disturbance of the market on account of the advance in rates, that they did not know where they were at, in other words. He obtained very few orders, so few that they are hardly worth mentioning. We had a few orders for some bridge timbers which were to be gotten out before October 1st, so as to avoid paying the new rate. That was large stuff, large timbers, which had to go to Duluth. I think with the exception of a very few cars, yard stock, that was all we had.

The summit of the Cascades, which is approximately from seventy to one hundred miles from Puget Sound, is about the dividing line between eastern and western Washington. West of the summit it is entirely a timbered country. The general moisture there has evidently induced a heavy timber growth, and the country from the northern boundary line, way through into the middle or southern part of Oregon, is generally a heavy timbered country. There are a few spots here and there that are valleys, prairies or flat bottoms, but that part of the country is so small in extent that it is almost unworthy to mention. The timber industry is practically the great industry in that part of the state.

East of the summit of the Cascades for the first forty or fifty miles, there is a sparsely timbered section. That section is mountainous and sparsely timbered. There is some white pine in that section and some yellow pine, and a sprinkling of fir. East of that line you get into the prairie section of the state, and that is an agricultural, grazing and farming district generally. Some sections are much better than others, some sections are arid and need irrigation in order to grow crops, and some sections are very moist and are highly cultivated. Again, when you get towards the eastern end of Washington you find a timber district, similar to that east of the summit of the Cascade mountains.

I mean that this section in the extreme eastern part of the state is similar in its timber growth to that section just east of the Cascade mountains. It is a sparsely timbered sec-

tion as compared to that heavy timbered section west of the Cascades. It is not generally mountains; it may be hilly but not generally mountainous. The altitude is high in that section, but it is not generally mountainous.

Lumber is by far the largest and is the principal industry west of the Cascade mountains. We have some fisheries in the waters of Puget Sound and the adjacent waters of the Pacific Ocean. There is some agriculture in the valleys, in western Washington, west of the Cascade mountains, where the lands have been logged off and where they have been burned over and submitted to agriculture, and that is getting to be a promising industry. There is also some dairying and making of butter, some canning of milk, in these valleys that have been logged off. There is some manufacturing and some wheat milling. The wheat brought from eastern Washington is milled on the coast to a great extent. Some of it is shipped in the grain to Europe, but some of it is manufactured into flour there. Outside of some other small industries I think that constitutes the majority of the business in that part of the state. Lumbering is by far the greatest industry there—lumbering and industries directly connected with it.

The great density of population in Washington is west of the Cascade mountains, especially along Puget Sound. It is found in those towns along there—Tacoma, Bellingham, Everett, Ballard, Fairhaven, Blaine, and down around Grays Harbor. That population depends in the main on the lumber industry and its allied industries, and upon shipping and fisheries, and to a small extent, upon the industries you referred to. There is some timber in eastern Washington, directly south of Spokane, but that does not extend very far east of a line drawn south of Spokane. In other words, taking Spokane in this location (indicating on map) there is timber out here and here, but when you get west of that there is no timber, it is a prairie country. If you mean strictly grades, we make almost an infinite number of grades of all kinds; we make three or four grades of clear lumber and we make several grades of different kinds of common lumber, and so on. I might illustrate it by saying that we make almost as many grades of lumber as the railroad has classifications or freight rates. By clear lumber we mean the lumber which is free from any defects, we mean lumber that has no knots or no pitch seams, and has very little if any sap on it, and is a perfect piece, in other words, that is clear lumber. Ordinarily we make three grades, and recently we have made one more grade, a fourth

grade, but ordinarily we make three grades. That is all high grade lumber. Specialties are made in the same grade as clear lumber frequently. By specialties we mean stock that is intended for making wooden pipes, or for making ladders or for making wagon boxes or other special purposes like that. That is about the only way I can illustrate it. It is a high grade product. By common we mean the grades of lumber which have knots and which have pitch seams or defects and are coarse in character. That is, lumber that is generally defective, but yet it strong enough to be of value, is satisfactory when strength is required, but will not be used for high grade purposes. We make several grades of common. We have a No. 1 grade, and lately we have been making a No. 2 grade. We have a grade that comes below that that is called a cull, but I might say that in making common lumber we make a great many different sizes and lengths. A log, or possibly lumber, may be a common grade, and yet may have a high value on account of its size or length. It may be a piece, say, two inches by fourteen inches, say 32 feet long, which is a piece that demands a good price in the market on account of its size and length. The common is below the average.

As a general thing, lumbermen, in order to get a basis for figuring their prices, will base it on the lowest item in that list of commodities. An ordinary piece, two by six, short length, is a common basis. On an average, ordinarily, in our own district, located where we are, we would get between 25 and 30 per cent. of clear lumber, and we would get 70 or 75 per cent. of common grades of lumber. You can only estimate the cost of lumber by a sort of an average. In other words, we estimate it, I presume, like the railroad estimates the average hauling of its traffic, whether it is a ton of coal or a ton of silk, it may all go into the same train. I can see no way in which we can figure it different from that. The cost is per ton or per thousand; no matter what the grade or the quality, the per ton or per thousand basis on the average is the best we can do. There is no way that you can take any particular grade or one or two grades and ascertain the cost. When you manufacture all the grades you can figure the cost of all of them; or if you only manufacture one grade of lumber, of course you can figure the cost of that. For instance, if you manufacture nothing but two by fours, I could tell you what they cost, but we do not do that. We manufacture a great many different kinds of lumber; besides the lumber of different sizes, we manufacture flooring and other high grade stuff,

and the only way we can figure is by taking a general average per thousand feet. We cannot figure it by the day or even by the month, but we must average it by the year, because there are a number of conditions that come in to increase or decrease one's cost during the different periods of the year, and so we have to take all those things into consideration in figuring the cost. We could not take a day's run and find out what was the real cost and output and profit of that day. I do not think the railroad company could take a train of cars across the continent and figure out what a certain day's cost would be to haul that train, because they might have a storm or a wreck or some other delay, and I do not see that there is any way in which we could figure the cost, either, on any day. If the average cost is $12 for a log, and we get a small percentage of that log that will sell as high as $30, it would not be possible for us to ascertain just what that lumber cost which we sell for $30. All we can do is to ascertain the average of the whole cost. It could not be said that we had made such and such a profit on that particular product for which we got $30. I do not think when we sell our common lumber at say six or seven dollars a thousand, after paying ten dollars a thousand for the logs, that it can be said that we were selling that common lumber under cost. We cannot tell what that common lumber cost us; in other words, we figure it on the law of averages. I have never been able to find out any other way of figuring it, although I have tried to. The average weight per thousand feet of the lumber which we manufacture is about as near as I can figure it, 2,800 pounds, the way we ship. With 40 cents per hundred pounds as a freight rate, and 2,800 weight per thousand feet to any of this territory marked 40 there on the map, extending as far in as the Montana line almost, we would pay $11.20 a thousand, freight rate. An increase of ten cents then would make it $2.80 more, and that would make the cost of our lumber $14.

For 1906 the average value of our product was $16.50 at the mill. Then to get that to this 40 cent zone, we are required to pay $14. To Chicago, and that region in there, the rate is 10 cents a thousand. Adding that it would make $2.80 more, which would make it $16.80, as against the average value of our lumber being $16.50. There is no other lumber that goes into this competing territory, or into any other territory, that pays the same rate as fir lumber. The rates paid by yellow pine are considerably below it, ranging from an average of 23 cents to 32 cents, and the rates paid

by white pine are from a few cents up to 20 cents, and the rates paid by eastern Washington and Idaho are the same into this northern territory, and five cents less into the southern territory, I believe. The rates paid by Montana lumber that goes into this district here, are all the way from 5 cents to 10 cents lower than what we pay. In other words, our lumber, fir lumber, pays more money to get into the market than any other lumber.

The way our lumber can meet these other woods in competition in these territories which we have designated as competing territories, is, I think, not because our operating conditions are less, but on the contrary, they are somewhat higher than elsewhere. We have, to offset that, a somewhat higher grade of timber than some of the districts in competition with us—not white pine or yellow pine, but some districts in Montana or eastern Washington. But, generally speaking, the average value of stumpage is higher in the other markets, and the average profit, I am told, is much higher than our profits.

I do not know of anything else to explain to the Commission except that I might say that I have been in business there for 18 years. I have seen depressions before. 1894 and 1895 were very bad years with us. But I have at no time seen a depression which has come so suddenly and which has taken the workingmen so unawares as the present depression. Of our own crew of formerly 600 men, with a pay roll of between $45,000 and $50,000, to-day there is no one at work except the caretakers and a very few repairmen, and, generally speaking this depression has left the working men in rather straightened circumstances, because they were not prepared for it. They are not a very provident lot anyway, they do not lay up very much money, and it has been and is a great hardship to them. I received a paper last night, in which a column was headed that the associated charities were calling for a meeting in the city hall of Bellingham to arrange to take care of the idle workingmen, that there was great hardship and great suffering, and that funds were being subscribed in order to take care of it.

The closing down of those mills is almost entirely the cause of the idleness of those workmen. The only time the workmen in our district are engaged in the fisheries is in the summer time, for three or four months, and outside of that they are engaged in lumbering or in the shingle mills, or cutting,

or in sawmill work, or something of that kind. That is our great industry.

I am not prepared to say just what the average amount of profit of our mill for a series of years is. There have been some years when there has been no profit; other years we have made a fairly good profit on the manufacture of lumber. I can give you the figures, I think, for 1906, from memory. For the year 1906 the cost of manufacturing our lumber in the mill, from the slip to loading it on the car, was $4.75 per thousand, exclusive of any charge for depreciation, or any fixed charges such as we might have for a shut down for a long time, or a fire loss, or any extraordinary loss—just the ordinary running expenses. We ordinarily estimate that the life of our plant is anywhere from ten to fifteen years, and on the capacity basis, based accordingly, we aim to charge off a dollar a thousand feet for depreciation to take care of extraordinary losses. That would bring the cost to $5.75. The cost of the log for 1906 was about $9.20 or nine dollars and something. That would bring the average cost of the lumber to about $14.75 or $14.85. The average selling price for the year 1906 was $16.50. The average profit was about $1.65 or $1.75. During that year we purchased some logs from the logging company and some from outside and from different sources. We would buy them whenever we were in need of certain grades, or could buy them. Being interested in a logging company, we would have made more money had we sold the logs on the market outside rather than to our own mill. During 1906 I could have sold the average product of the logs direct from the camp and made fully as much money as by manufacturing them. In fact, I think that we could have made more money. I think the general average of logs sold at the figures for that year, we could have made a little more profit than by taking the logs and manufacturing them. We have not charged the mill full figures for logs.

I want to straighten out a question asked before this one, and my answer to it. In 1906 the log price was not so high. It was 1907 when we could sell our logs at really a better price than we could manufacture them for and put them into lumber. I simply want to correct that statement. The only way, of course, that we can keep going and pay taxes and interest on our loans, or whatever we have to carry on our investments, is by manufacturing, and, to some extent, making a market for the logs, and, as far as we can, bringing something into the country. Most of us out there are not blessed

with too much money, and we have had to keep on earning something to keep up the value or increase the value of the timber. I would have preferred it, if I had been in a position to do so, to just hold onto the timber, and not manufacture it, and I think I would have made more money in that way, and I am sure in the end that would be the way to make the most money, if one could hold onto the timber. There are a great many new mills that have started in the lumber business within the last year and a half under the stimulus of high prices. The prices looked good and people did not stop to figure what it would cost in the end to pay the fiddler. They have built a great many small mills in rather inaccessible places in some cases, and the result has been a good many failures. The result will be with a great many of these small mills that they will be completely wiped out, because they are unable to tide over any long stretch of trouble.

I should think it would be natural that the larger holders, who have the money to do so, would buy up these small holdings, and that they would gradually be withdrawn from the market, and that as time goes on the holders of these lands will be able to get a higher price for them. That seems to be the policy of the large concerns like the Weyerhaeuser Timber Company. They have already very large holdings, timber that is accessible, and also timber that is now inaccessible, and they are getting hold of timber as they can from time to time, and when any depression comes along, I assume that they take advantage of it to get hold of additional timber. If I were in a position to do so I would certainly take advantage of a depression, because eventually the price of stumpage is going to be much higher than it is now. The available supply is being cut off in the south and in the north, and we are getting other means of transportation, such as the Tehuantepec railroad, and it may not be so very long before the Panama Canal is opened, and with these increased facilities for transportation, we will be able to get into the Atlantic coast distributing points, where we can get, by a short route, into thickly populated districts. The trouble with us is we are operating and selling in a thinly populated district. The country is sparsely settled, and even the sale we have on our regular yard are limited to a rather thinly populated district. We have found sales for our special stock in the more thickly populated districts, and if we are deprived of the profits we have been able to make on those high classed grades of our product we could not afford to ship into the low class dis-

tricts. We must have an average distributing market throughout the country, where we can get an average price for our lumber, and we have to be able to get into a market where we can get a profit for our high class grades. We can get a high price for certain of our grades of lumber if we can afford to ship them and are able to ship them to New York, but the man in Dakota or Minnesota will not pay for that. So, generally, we do not ship that class of our product to Dakota or Minnesota, but to New York.

It is so assumed by those who hold timber and have large investments in it, that sooner or later the source of supply will be the Pacific northwest, and the enhancement in value by reason of that alone, will be very considerable. I have been told by operators in Michigan, that they have made more money on the few pieces of timber land, that they have left, than they made on their operations, and they have advised that we quit operating, that we stop manufacturing lumber, and hold our stumpage. They say if we do that we will make more money than we will by manufacturing it.

The burden of the depression always falls upon the laborer and upon the small and incompetent and incapable holder of a mill property, a man who is not well fixed financially and has not the capacity or capability of meeting difficulties. That is true of any business, more or less, but a number of these men have just recently gone into the business. They assumed that they were going into a continuous high priced business, and evidently on the assumption that the rate which is the basis of our prosperity there would be continuous, they made their investments. I do not think all of this depression, all of this closing down of mills and throwing the men out of employment is entirely due to this change in rates. I think the original cause of it was probably the uncertainty on the announcement of the rate. That was probably a great factor in precipitating uncertainty in buying. I think that no doubt our troubles have been accelerated by other troubles, but we have not had any troubles out there of any kind, until about November 1st, and we had lack of orders as early as July. We find that all other materials have not declined in proportion to the depression in the lumber business.

Last spring there was for two months, from about the middle of January to about the middle of March, a complete embargo on the Northern Pacific and Great Northern. That was on account of some severe snows, conditions of that kind, and when they reopened there was a congestion of traffic for

some time. As I remember it the Northern Pacific never did catch up. The Great Northern furnished an ample car supply for a while, for a short time, I think it was in July. I know they furnished a great many more cars than other lines. I could not tell you exactly what it was at that time, because what I have here is the average. I think from individual cases that it was about the same. I could not give you that accurate enough to make a statement about it.

Prior to 1906 we had better years and worse years in our business. I think we had no years when they were any better than that. I remember 1904 was a very bad year and we did not make very much money. We made something under a dollar. I cannot tell you what we did make. Our business was not profitable in 1904.

Cross-Examination.

I am a director of the Pacific Coast Lumbermen's Association, and in 1906 was Chairman of the Transportation Committee. I attended the hearing before Judge Hanford in Seattle, where the injunction was granted. I remember an affidavit being presented there by Victor H. Beckman, containing copies of statements he received from various members of this Association.

The attention of the witness was then called to the report of the Grays Harbor Lumber Company, in which they say that if these new rates go into effect the result will be as follows: In answer to Question 11, they say they have invested in the lumber and shingle business $300,000; and in answer to Question 8, they say that as the rates go into effect their financial loss will be $100,000 a year. The witness was asked if that fairly represents the situation, and continuing his testimony, said:

I cannot say. I don't know how much he has invested in the business. I don't know that that represents the average. I presume it represents the opinion of the Grays Harbor Lumber Company.

The attention of the witness was then called to the report of the Covington Lumber Company, in which that firm answered Question No. 6 as follows: "In your judgment, how much a shrinkage in the demand do you anticipate from the advance in rates? Answer. Three hundred carloads annually.

"If so, how much financial loss will be involved? Answer. $300,000 annually." And was asked: "Do you think that is a fair statement of the conditions in the State of Washington?"

Continuing, the witness testified:

My answer to No. 6, 300 carloads annually, is on the assumption that he means relating to his business. I really could not say. It might not be that he would lose $300,000 annually on the 300 cars. If he could not ship the 300 cars he might not be able to manufacture at all. I assume it is on that basis. I do not think there are many mills in Washington with a capital of $250,000, that under these new rates would lose $300,000 a year.

I do not know the Gray Lumber Company, I do not know who they are. I don't know what that company means in their report by loss, whether it is a loss of profit or a loss of valuable business. If it was a loss of profit, I should say that where they say that their financial loss would be $24,000, and that they have invested in the lumber and shingle business $36,000, that if it was a loss of profit, it was over estimated. If it was a loss of business, I should say it was all right.

The attention of the witness was called to the report of the Coal Creek Lumber Company of Chehalis, Washington, to the effect that their loss would be $12,000 a month, and that their investment is $150,000. The witness testified:

I am inclined to think they mean the volume of traffic. I do not think by their loss they mean loss of profits, because they never made any such profits. I do not think so.

Exhibit Bloedel A, offered in evidence, page 819, consisting of copies of affidavits served by counsel for the complainants on counsel for the defense before the Commission, offered in the case of the Pacific Coast Lumber Manufacturers' Association against the Northern Pacific et al, pending in the United States court at Seattle.

Continuing, page 823, Mr. Bloedel testified:

We have a subsidiary logging company, the Lake Whatcom Logging Company, that does the logging. We do not do all our own logging. My affidavit in the case in court at Seattle in which I state that our mill was situated at Bellingham, Washington, and employs 570 men, and that the monthly pay roll amounts to $45,000, would be true for the summer months of May, June, July and August, I think, 1907. Before that I think we might have had a hundred men less than that, I could not say exactly; but generally speaking the force was not as large in the beginning of 1907 as it was during the summer. I should say that from January to May our pay roll was less than $45,000, possibly in the neighborhood of $40,000—a little bit less. That includes men employed in the

shingle mill and all around. That includes the two shingle mills; that includes the general estimates of the men employed in the logging camps, not only by the Larson Lumber Company, but kindred interest that were necessary to the progress of the industry. I should say about 200 men in the logging camps. The statements in that affidavit do not refer to the Larson Company's milling operations alone. It is for the aggregate industry, including the getting out of the logs. The cost of sawing lumber, the physical operation, just the straight operation at the mill, was $4.75 for 1906, and with a charge of $1 for general depreciation, that is $5.75. In the early part of 1907 we ran our mill night and day until the embargo was on, and then we closed down. We ran just a day shift after the embargo was on. We do not log all of our own timber. We buy some outside timber and we sell some timber. In figuring up this cost of the lumber, we charged the mill with the average log value, or what the log is generally supposed to be worth, and we aim to be conservative on that. Therefore, in figuring the cost of producing our lumber, we have taken the approximate market price of logs on Puget Sound, and added it to the cost of the sawing. We buy logs on Lake Whatcom, generally of individuals, and sometimes if they ship in by rail. I might say that we do not buy logs in general quantities, we buy them when they are short, sometimes buy certain grades, or we may buy cedar or some other item like that. We do not buy them from any association. I have not made any payments to this association for our business. I have never bought any logs through, and sent the invoice and check through the secretary of the Loggers' Association. I am not located where I do business in that way. That is primarily on salt water. You see we are located on Lake Whatcom, a fresh water body. I should say that lumber that is manufactured at our mill is a pretty good average value compared with the average of the state; that it is probably as good as the average value, and above some of the values in the lower section of the state. That is about the way of it. I think the value of the annual cut in Washington is about $75,000,000. That is the value of the lumber cut. The annual cut is about 4,350,000,000 feet. We take that from the government reports, which seem to be accurate. I don't know about the average value of all lumber in the State of Washington at the mill being about $17.50. I don't know what that figures out. The government report shows, by the way, and we have some recent reports on that, that the average value of the fir was something less than $14, I think.

If there was a dinner at which Mr. Hill made an address, I think it was in 1891. I do not think there was any dinner. About six years after that along in 1897 I made an investment, a small investment, in timber lands, not very large. I presume it was less than $10,000. My interest in my present business is the result of husbanding that investment and borrowing money. I should say, generally speaking, there is an investment of about a half a million dollars in the mill plant; that is, that it would represent that if all items were liquidated according to the value on our books; but that is hardly to be figured, because if the business is not prosperous the mill is not worth half a million, or half of that. The value of the plant depends upon the prosperity of the industry. I should say last spring that I should think the mill value was about half a million dollars. I only own a third of that. That does not include the timber lands, nor the railroad. My proportionate interest in the railroad and the timber lands is the same as my interest in the mill. You must understand that we have borrowed a good deal of money to make these investments and improvements. We have not done this on an investment. I might explain that we had a partner who had a good deal of means, and who had confidence in the industry and in the integrity of the management, and who, instead of organizing a company and promoting it, simply told us to go into business, and whatever money we needed, he could loan it to us; and we have borrowed the money from him and we pay him interest on it, and that is about what we have been doing.

I think this company have something over a billion feet of lumber. We have something like close to 25,000 acres. Some of it, by the way, is logged off. We have figured that it was worth in the neighborhood of $2 a thousand, and possibly more, a short time ago. What it is worth now, I cannot say. Before this question of the rates came up it was worth $2 a thousand. The railroad is dependent upon the hauling of the timber. That is the only business it has, and it would be of no value if the lumber interests are of no value. I think the railroad cost us something over a hundred thousand dollars. We have about ten or twelve miles, somewhere along there.

We do not complain of the increase in these minimums. That increase in the minimum has enabled the lumbermen to move lumber more rapidly than before. It has aided us to move lumber. In other words, it has given us an increased move-

ment of lumber in the same cars, and as there has been a car shortage, it has helped that, and we are very glad that has been done. I did not say that because the white pine of Minnesota and Wisconsin could go into the Dakota and Minnesota markets in two or three days, the farmer was willing to pay a dollar a thousand more than he would if he had to wait. The lumber is all handled through dealers. We do not ship practically direct to the farmer. The farmer does not buy by the carload. He buys in small quantities. What I meant to say was true of the dealers. They explain that they can get along with very much less investment in their business. They do not have to order so far ahead, and there is not the uncertainties as to deliveries and loss of profits by not getting the lumber, and so on. I think if this movement of lumber on these northern roads was rapid, so that we were not tied up for this great length of time we would get that dollar. I think we would have that advantage if that could be done. I think that the reason for the demoralization of the market in the east, where we have our traveling salesmen, traveling out of Minneapolis, was due largely to the agitation and uncertainty about this tariff. We all have our own notions about that. I figure that generally speaking anything in the line of agitation which affects the price of lumber, that is, produces a decline in the price of lumber, creates an uncertainty. In other words, nobody can sell lumber on a falling market. The buyers are sharp, and they take advantage of these things to depress the price, sometimes abnormally. I base that not entirely on the reports from my Minneapolis representatives, but on reports from dealers and from talking with people in the business who are supposed to be affected. On my direct examination I said that I founded my opinion in part at least on the reports I got from our Minneapolis salesmen. Those are largely letters from day to day, and they are on file in our office. I gave a copy of them to Mr. Adams of the Great Northern. I have no objection to your reading the letters in full. I did not give them to Mr. Adams for that purpose, but I have no objection to your reading every word that is in those letters.

The estimation of annual value of the output of the lumber in Washington is about $75,000,000. The estimated annual pay roll, as nearly as we can get at it, is $60,000,000. There is, of course, quite an item of other expenses that enter into that cost, besides the pay roll. I assume that in the $60,000,000 they include the expense of the logs, that is, the getting

out of the logs, or the value of the logs. That is, they are largely pay rolls. It is the lumber industry that is intended by that figure, the industry which produces the logs, hauls it, and finally manufactures it. That is the intention. That figure of $60,000,000 is intended to cover the getting out of the logs. It has been stated here that the average cost of manufacturing and milling is about five dollars. That on a hundred million feet would be $50,000. The balance is the log cost and some other items. On figures like that we are simply taking general estimates that are made. We cannot give you accurate figures.

Our company has no outstanding bonds or mortgages against our timber lands or our railroad or our mills, but I want to explain that the partner I refer to, Mr. Larson, is a man of means, and he has simply loaned us money as we needed it on our notes, on the individual and company notes, without any further security. I think we have something in the neighborhood of $600,000 to him, and also some outside indebtedness, probably $100,000 more of indebtedness, so that the total indebtedness against our plants, railroad and timber lands amounts to somewhere between $600,000 and $700,000. If we had not this partner, who had confidence in the general management, that indebtedness probably would have been floated by bonds and mortgages, or something of that sort, but he was the financial man. The balance would be the same. A third of this indebtedness, it might be considered, Mr. Larson practically owes to himself. C. M. Stafford is our agent at Minneapolis.

Counsel thereupon read to the witness a letter from C. M. Stafford to Mr. Bloedel, as follows:

"Yesterday and to-day there seems to be considerable talk among the lumbermen that when the grain commenced to ripen it ripened so fast that they could not get into the fields to harvest it before the wind caught it and shook out most of the grain, and that they do not know how extensive this loss will be, and this seems to be another reason why they do not feel disposed to increase their stocks.

"The pine manufacturers are now beginning to feel the lack of orders, and in some instances are instructing their men to make a price to sell, but to my positive knowledge it does not bring the orders. There is something peculiar about the same stereotyped story that we hear everywhere almost, regardless of the location, about poor crop conditions, and the further remark that keeps constantly creeping out, that they

now have us on the run. As one man put it this morning—'you fellows are following us up close now for business whereas a short time ago we had to take our hats off to you and ask you to take an order as a favor, but we have you coming our way now.' This attitude makes it difficult to secure orders, even at a heavy discount. To illustrate—I satisfied myself the other day that even a $15 price at that time could not move the cull shipments, whereas if we had an order for the stock we could easily secure $18 or $23."

The date of this letter was August 28, 1907.

Exhibit B, Bloedel, offered in evidence, page 841, being the letter referred to contained in the evidence of this witness. Continuing, the witness testified:

There are practically daily letters relating to the same subject, both before and after; and the reason that I handed these letters to Mr. Adams was to try and compromise this matter before it got into trouble. I tried to show that the condition of the market was being taken advantage of, and that we could not stand it, that we ought to get together. I made importunities in that direction, that the lumbermen and the railroads ought to talk these things over, but they have never come near us, have never said a word to us, simply promulgated the rate without saying a word to us. I gave them, not to Mr. Adams, but to Mr. Somers, the general agent at Bellingham. He is their man. He said he would make copies and send them to Mr. Adams and would show me his reply, and he did; and that reply was to the effect that Mr. Adams would transmit the copies to his superior officers, or some such matter as that.

I did not give the cost of our manufacture in 1905, and I could not tell you exactly. I can approximate it. I think it was in the neighborhood of $3.50, or $3.75. I cannot approximate the entire cost of logging and manufacturing the completed products to us f. o. b. in January, 1905. We do not figure that for any month or for any day. I can approximate it for the entire year 1904. It was probably a little less than 1905, possibly twenty-five cents less than 1905. That is about $3.50 in 1904, I think. That would be close enough, and possibly $3.75 for 1905. Logs were worth about $6.50 in 1905, and we were charging one dollar for the general depreciation and deterioration of the plant. That would be $3.75 plus $1, would be $4,75, plus $6.50 would be $11.25. That is f. o. b. our mill. The cost includes handling and loading. In 1906 I think that the total cost was $4.75, and $9, and something, and

$1—say, $14.75. That makes a difference in the two of, I think, $3.50. I think a fir car siding, one by four or one by six increased something like $23 to $32, or $9 a thousand in the two years from January, 1905, to January, 1907. I think you are right in saying that our fir flooring one by four or one by six, B fir flooring, ten to sixteen feet long, increased between those two dates $5. Fir drop siding one by six, all f. o. b. the mill, between the same dates, increased between January, 1905, and January, 1907, from $17 to $23, or $6 a thousand. I cannot give you those figures, nor can I confirm them from memory. I can only tell you that there was a rapid advance from 1905 to 1907. I cannot confirm the figures of 1905. I can approximately confirm the figures of 1907. I do not know anything about fir car sills, we never made them. We do not handle them. We have handled railroad ties in very small quantities. I think the increase on them from January, 1905, to January, 1907, was about $4. I do not think they were as low in 1905 as $7. I cannot carry the lists in my memory. There are a thousand items on that list. Fir car sills and fir car sidings, that goes usually to the eastern market, where the car manufacturing concerns are located, Michigan City, I believe, and St. Paul and Milwaukee, I think to Detroit and other points.

I do not know that there has been a considerably larger advance in the selling price f. o. b. the mill than there has been in the cost of manufacture. You cannot tell whether you have got the quality out of the logs or not. That is a matter of percentage. If you simply mean the price of those specific items, that is probably the fact, that there has been a greater price advance than there has been in the cost advance. In the selection of lumber as a matter of necessity, the element of fitness and desirability and the demand for certain classes of stock always enter. It is true that the element of desirability, of fitness for the purpose will have no little to do with the ability on the part of the manufacturers to sell lumber. The preference of the public for lumber for the purpose of siding, weather boarding on houses, differs in different markets. Some markets prefer cedar, some use what is called drop siding, some use white pine, some use spruce, some use shingles. It depends on the market. There usually is a section of country where they want one kind. I do not think it is a fact that yellow pine siding is esteemed much less in all the western and northern markets or in the southwestern markets or southern markets than either the fir or the white pine,

if you mean in the drop siding as distinguished from what we call lap siding. If you mean drop siding, why there is practically no difference so far as the demand or the uses are concerned, so far as I have been able to ascertain. I think in the competitive markets the demand for one or the other is dependent on the price. On the other hand I think that white pine of an equal grade would be preferred over fir, because it has the reputation, and the carpenters like it. White pine is taken over fir in certain markets, and on certain grades of business, even though at a much greater price. We ship practically no spruce. We ship hemlock, and we ship it in with the fir, as a part of it. I think there is practically no spruce shipped from our part of the country. We are not in the spruce section. I could not give testimony as to shipments of spruce from points on the coast, or figures. Our stock is not spruce. Ours is not the spruce section, and I would not give you any information about it.

Under the best rates we have been able to place our products right in Minnesota where there are white pine forests, in competition with white pine. As I tried to make clear yesterday, we aim first to get the clear lumber out of a log, and then the long and larger sizes, on which we can get a high price, because our competitors cannot easily produce it. Now, carrying that out, we cannot ship two by four, sixteen feet long, to St. Paul or Minnesota. There are a lot of mills in Minneapolis. They beat us out five dollars or more in price, but we can ship two by twelve, twenty-four feet long, and lay it down there at the same price they can. Their price at the mill in St. Paul, we will say is about $27.25, I think, something like that, and our price is $27.25. that is fixing it on that list you have there as a criterion. That is, there is no price now, but fixing that list as a criterion for comparison. Now, under this forty cent rate we have been going to St. Paul on certain items and competing with them, right there in their own market. We have the benefit from St. Paul of certain local rates into the distributing territory in southern Minnesota, and into northern Iowa and into this section of country (indicating on the map). That is, the lines radiating out of the Minnesota terminal. Those rates are the same for us an on white pine. If they are five cents, we can compete with them on that item. If they are ten cents, we can compete with that. I think that illustrates the question.

Yes, we go to where the white pine grows, and on certain products we compete with white pine. The white pine supply,

according to the best information I have, has increased up to within the last two years, I think, and since that time it has declined. I could not give the exact figures, but it has declined. I am not informed as to the number of feet the cut has declined, but I am informed that there were extraordinary conditions which decreased or diminished the ordinary cut of logs on account of low water conditions in the rivers, which I believe influenced the cut. We get our logs in practically from day to day as we need them, and I think in Minnesota they log entirely in the winter months, and run the logs down in the spring months on the high water, and saw them in the summer season. They are unable to operate their mills in the winter as we are.

I think that the manufacture of lumber has gradually moved westward. The history of the industry seems to show that. The pine of Michigan is largely gone, and the white pine that is left is being used in the arts more largely perhaps, and commands higher prices, but they have a substitute wood. They use hemlock and scrub pine and bull pine, and the stuff which they formerly left. They have to use substitutes to take the place of the one time large supply of white pine lumber. The forests of Wisconsin are largely gone, with the exception of a large quantity of hemlock. There is a large quantity of hemlock being manufactured in Wisconsin. Wisconsin manufactured more lumber than the State of Washington until last year. There is quite a bit of pine in Minnesota and there is in Wisconsin and northern Michigan. There is still quite a bit of pine being manufactured. It is very largely reduced, however. In what you call the prairie states, that is to say in Ohio, Indiana and Illinois, they would find their first supply in Wisconsin or Michigan, except as it would come from the south, from the yellow pine district; but Pennsylvania and sections tributary to it, have their own supply. They have a very good hemlock lumber here which is being manufactured. The pine they would have to draw it from those sources you refer to.

The country west of the Cascade mountains is very largely mountainous, until you get, we will say, within a few miles, or a matter of twenty miles from the salt water. In the section in which I live the mountains come right down to the bay, except in the northern part of the country; but in the southern part of the county they come right down to the bay and its varies so you cannot describe it exactly. It is what you would call a mountainous country in comparison with this country. I think Chehalis is about fifty or sixty miles from

tidewater. To the summit of the mountains I should imagine it is 25 or 30 miles from Chehalis, but to the foothills I don't know how far it would be. I think the foothills are about ten or twelve miles distant. There are sixty miles of timber between that and the ocean, but I described the country from Puget Sound to the summit. When you get here (indicating on the map) you get this vast stretch here that is probably a more level country than it is right on Puget Sound proper. I attempted to describe this territory in general terms, without going into details as much as I could. It is not entirely all mountainous west of the Cascade mountains in the State of Washington; in fact, it is only mountainous close to our territory on account of the way in which Puget Sound cuts in there. There is a wider stretch down below Puget Sound in the State of Washington, practically all covered with timber, than there is on Puget Sound. I cannot tell you how wide it is. I only know the section in our own country, and we have generally considered it a mountainous country. That means Puget Sound. I don't know anything about the country below Puget Sound, except in a general way I have traveled over it. I have traveled through western Washington on the Northern Pacific between Tacoma and Portland as much as any other part. In that way I can describe that, but it is a question of opinion. You might think it was mountainous and I might think it was hilly. You might think it was a cold day and I might think it was a warm day. It is a question of opinion on that subject. Generally speaking, and judging from the best opinion that I could form on the subject, the production of lumber in the State of Washington in 1906 was four billion three hundred million feet. The government reports from the Forestry Bureau for Washington show four billion three hundred and five million feet. My knowledge is based on that report. The western Washington product as distinguished from the eastern Washington product might be called three billion three hundred million feet in a general way.

I could not say any more about the production of merchantable lumber west of the Cascade mountains in the State of Washington than that the total production of western Washington, roughly estimated, basing it on those reports you have there, at about three billion three hundred million feet. On the assumption that the government reports only the lumber which is manufactured for sale, I should say that it was merchantable. I do not think they would estimate slabs or such stuff as that. I want to impress upon you that these figures

are at variance at times. Now, we take government reports and we estimate upon compiled reports from various mills and they might not all agree. I could not say how much of that three billion three hundred million is produced on Puget Sound, any more than you could tell us the number of tons of material that you have moved from one district or another district. I have simply not kept any record of it, and I don't know. If our trade journals keep any record by districts from month to month I have not taken any notice of it. My duties as Chairman of the Transportation Committee do not relate to statistics.

I think in Bellingham we produce something like a million feet a day, and if we operated the year round I should say that would be about three hundred million feet. Now, that might be within a hundred million feet. I could not tell you. I have consulted no record, and have not charged my memory with any figures. I am giving you my best opinion on the subject. I have not kept track of what they produce at Everett below us on the Sound, nor at Tacoma. I know Tacoma is a very large producing center. I think Gray's Harbor has the reputation of being the largest, and Tacoma is second in the state. I do not know how much they produce at Seattle. In the City of Seattle proper I think they produce very little. It is at Ballard, a suburb of Seattle, that they produce the lumber. There are some 21 mills there. I don't know how much they produce, nor how the production at Ballard compares with Tacoma. Ballard is about one hundred miles from Tacoma, and Everett is about sixty miles from Tacoma. Everett and Tacoma and Ballard and Seattle are the four producing points on the Sound, just about. I have not made a study of the producing figures at any of those places in that way. I have not charged my memory with the figures. I cannot tell you the entire production of the Puget Sound district as compared with that on Gray's Harbor. I think the Puget Sound district produces more than the Gray's Harbor district. I could not tell you how much more. I do not know how much western Washington produces. I want to explain that I have not charged my memory with the production of lumber by districts, or points, or locations. That requires considerable figuring.

I cannot give you the amount of the salmon industry accurately. We generally figure that the salmon industry amounts to about ten million dollars a year; that is the salmon fisheries industry. I cannot tell you the number of cases. I cannot tell you the exports of flour from Puget Sound

per year. I think there are in the neighborhood of a thousand mills all told in the State of Washington. I should say that there would be eight or nine hundred in the Western Washington district. I cannot give you the exact figures on the exports of flour, nor how that compares with the lumber business. I could not tell you how the salmon cannery business compares with the lumber business. The general fisheries, I think, are estimated at about ten million dollars a year.

There is some coal production in Western Washington, but not so much as in Eastern Washington. I cannot tell you how many men are employed in the coal industry in Western Washington. There are some large mines near Seattle and some large mines near Tacoma. Roughly speaking, I think the total production of coal would probably not amount to over five million dollars in the western portion of Washington—the value. I was in the coal business at one time for five years, never in the salmon business. I could not tell you how lumber would compare in percentage with coal, salmon, flour, and the number of men engaged in that business in the State of Washington or Western Washington.

I do not know the population of Gray's Harbor. I have never been there. I do not know the population along Wilapa Harbor. The population of Bellingham is about 30,000 people; of Everett, 20,000 or 22,000 people. I do not know the population of Seattle. The re-estimate it every little while. I think an estimate of 250,000 is high, possibly 200,000. I think the Seattle people would regard that as low. I cannot tell you about Tacoma. I prefer not to guess. I should estimate 75,000. I cannot tell you the population of Olympia. It is a small town, the capital of the state. It has a small population. If you want an estimate of the population, it is about 5,000. I cannot tell you the population of Raymond and South Bend, the only two towns on Wilapa Harbor. I estimate that there should be between five and six hundred thousand people in Washington, west of the Cascades, about half or a little better than half of the population of the state.

In 1905 we produced lumber and put it on the cars for about $11.25 a thousand. That included the general average expenditure of manufactured lumber, which included kiln-drying, and included the planing or smoothing, or whatever we did on the lumber. That is not simply the price of rough lumber f. o. b. the cars. The cost in 1906 was raised to $14.95, about that, I guess, and the price in 1906 included some items of finishing, smoothing and anything else that might be done to produce

the product. It included the general average cost. This increase in cost was largely caused by the high price of labor, and probably the inefficiency of it. There was a great scarcity of labor, and we had to use a great many inefficient men, who often could not perform an ordinary day's work, or would not; and the increase in the cost was not only the increase in the cost of labor per day, but on account of the less work done per day. The inrease from $11.25 to $14.95 was due very largely to the increase in labor, and then, of course, I mean that was accounted for by the price of the logs also. You remember the price of milling increased, I think, about a dollar, somewhere along there, or one dollar and twenty-five cents, or one dollar and fifty cents, but the log cost increased largely, I think about two dollars and a half. There was quite an item due to the labor, about one dollar due to labor and two dollars to logs.

Of this dollar which went into the cost of milling, that included the cost of mill supplies, the increase in the cost of mill supplies. In the total cost of lumber we figure our mill supplies according to their actual cost. That has varied a great deal with us. I cannot give you the figures, but it has varied all the way from 20 cents a thousand to 52 cents a thousand in supplies, and I do not know even what an average would be, but I should say it is one-fifteenth of the total cost. I should say, roughly speaking, ten to twelve per cent. supplies, and ninety per cent. labor.

Mill supplies have increased. The cost of common iron and steel was nearly double what it formerly was, and belts and lace leather and such supplies as that went up, roughly speaking, twenty-five per cent. Those are the items that enter into our cost of supplies more thany anything else. I could not estimate how much of this dollar was mill supplies and how much was labor. I could not segregate the values.

Lumber in 1906 was worth an average selling price $16.50. That was the general average selling price of all the lumber we produced and sold. That was the average price which we actually obtained.

There were several changes in the price of two by fours at the mill in 1906. They rose about three dollars I think in 1906; that is three dollars a thousand. That was in short lengths. Some of the long lengths did not rise as much as that, and some longer lengths went more than that. In other words, we would stop at sixteen feet, and then eighteen by twenty got a bigger price, and twenty-two by twenty-four. I

think the two by fours, short lengths, rose either two dollars or three dollars per thousand in 1906. There was a rise in February, 1906, of two dollars, and my impression is that there was another rise in 1906 or the first part of 1907. I am not sure about the time. The list I think on the first of August, 1907, was about thirteen or fourteen dollars. I think, if Mr. Beckman says in his paper $13.50, that would be about right. I could not tell you what the same class of timber was worth at Minneapolis at the same time from memory. I think I can tell you by referring to a Minneapolis price list here. This list is dated December 8, 1906. I am not sure that it was effective the first of August, but I assume that there were not many changes. In December, 1906, the price of two by fours, ten to fourteen feet, or ten to sixteen feet, was $21.50 on board at Minneapolis. We do not make one by four drop siding. That is figured on a fence grade. I think our drop siding would go as an equal of their number three fence. I am not competent to judge though as to equality of grade. Some of our salesmen could tell you about equality of grade better than I could. On the basis that it is No. 3, their price was $18.50. No. 1 grade, $27.00 on sixteen foot lengths; and $26.00 on ten to fourteen foot lengths.

I am familiar with Minneapolis prices, and sell there all the time. I go there about twice a year, and I keep in general touch with them. I will give you the figures on the different grades at Minneapolis; on the one and a quarter inch finish B select and better, $65.00; C select and better, $49.00; D select $39.00; No. 1 shop common $43.50. That is inch and a quarter, probably about 12 inches in width. One by eight, common boards, they have about four grades or sometimes five. The quotation here is on one by eight common boards, ten feet, $31.00; twelve feet, $31.50; fourteen feet, $30.50, sixteen feet, $30.50. That is grade No. 1. Now we have that down on a No. 3, $22.50, $22.50, $22.20.

On No. 1, one by eight common boards, the prices were thirty dollars or thereabouts, first grade; and our stuff was worth at home, the same class of boards, about $14.00 or $15.00.

Of course, there is a radical difference between No. 1 white pine board and a No. 4 board. No. 3, $22.50, is the price of a twelve inch board. An eight inch board would be worth, according to this list a dollar less. They vary in prices on widths and lengths. For common boards, white pine boards, are very much better than this. For two inch dimension stuff,

they are not so very much better, but for boards, the white pine knot is a sound knot and the board will admit of a great many knots in white pine, a great many more in white pine than it will in fir. The fir is a case knot, and this knot is very apt to dry out and fall out, so that the fir is not so desirable. Where we can make the stock thicker, then the white pine in that regard is not so much superior. Our first class common boards, are supposed to have a fair percentage of knots. They admit of no very large knots. They admit of medium sized and small knots. They do not sell in competition with first class common white pine boards. They sell in competition with about a No. 3 or 4 grade of white pine boards. We cannot compete on an equality of grades with white pine. Where their rates are ten cents or twelve cents, we can compete on 40 cents. The only difference would be in the quality of the products. The quality of our common board is not as good. Take the two by four, short lengths, that is twelve to sixteen feet, we can compete and pay 40 cents. I think on the same grades, the builder or user of lumber would prefer pine. That seems to be the general impression, always where pine has been used, irrespective of price. That is, the price cuts considerable figure, but you would use pine. We can only compete as against the white pine on the matter of quality by overcoming that objection by price. I cannot state a stipulated amount of difference in price that we have to have in order to overcome this difference in quality. It largely depends upon the preference of an individual. Some may say, "Well, I will not use fir at any price." Another man may say, "If I can get fir at a dollar lower I will use fir." It is just a matter of choice. Sometimes our salesmen at Minneapolis tells us about how much less we have got to make our prices than the white pine in order to sell our product. It depends a good deal on conditions there. If white pine is short, why then, they will take fir. Generally speaking, our salesman does not tell us how much below white pine prices, on various grades and different qualities and different kinds of stuff we must go in order to sell our product. That is a matter left entirely to him. I do not question his judgment. We have got to get the price F. O. B. the Mill, but as to the competing price, we have not kept such close track of it. We leave that to him.

Prices of Oregon and Washington fir below white pine very largely, so largely on each of the grades that I could not give you any intelligent answer. As to how much below fir must

sell in order to sell at all. Taking two by four, six, I do not think the ordinary man would care very much whether it was fir or white pine; but taking boards, he would prefer white pine. Where it has to be worked, the white pine is softer lumber and easier to work with the plane; but for common rough purposes, for sills or two by fours, I don't think he would care a great deal, generally speaking. However, in the aggregate, he would take white pine at the same price in preference to fir. For a four by four, thirty-two feet long, he would probably take fir, because that is a stronger material, where strength is required.

Generally speaking, I know how much it costs to make shingles at the mill but I haven't any specific estimates of cost. I have figured it up but I haven't it in mind. I am interested in the shingle mill, but I have not charged my mind as to the particular figures in the shingle business.

(Bloedel Exhibit C, offered in evidence, record page 892, consisting of price list referred to in his testimony.)

Mr. Bloedel (continuing) testified: I want to explain that the lists of white pine vary very greatly, and that is the list of December, 1906. There may be other lists. They vary very much from time to time. They might vary on some items five dollars, or other items nothing, and they might vary on some less than five dollars.

Re-direct Examination (Record, 893).

1904 was not a profitable year in our business. I cannot say that we lost any money or made any money. It was a very trying year. Labor was very cheap and lumber was cheap. The average cost of production of our product in 1904, which I stated, was $11.20 a thousand, was based on $3.50 and about $6.25, I think for logs. That represents the average prices computed of cost to us. It does not represent the cost of any one grade, but represents the general average cost. That increase in labor added to the cost of the logs in the same proportion and even greater. The average price of our product at our mill in 1906 was about $16.50. That average price was affected by the increase in log rates resulting from the San Francisco disaster. There was an abnormal demand for lumber in San Francisco. Those who were so situated that they could ship by rail or water took advantage of it, and it withdrew from the rail market a large portion of lumber

which abnormally increased the demand, and conditions, generally, for our lumber. In addition to that there was a large railroad construction going on, and there was a great deal of lumber demanded for railroad purposes, and in North Dakota also.

Immediately following the year of 1904, the lumber market was not prosperous nor the trade profitable at that time. It began to improve in 1905. 1905 was what we call an average year for the year. The first part of it was rather poor and the last part was good.

This increase in prices applied more to the upper grades, that is, applied higher to the upper grades than it did to the lower grades. More in dollars, and there was a general advance.

The average price of Washington or Douglas fir, as given for the State of Washington, in the last Governmental statement is $14.34, and the average price of white pine is given as $18.32. The general average of fir is $14.20. These prices are supposed to be the average mill value of lumber by state and species for 1906. The price of white pine given is the average of all states producing it, $18.32. There are a great many states that produce some white pine. Take Michigan, the average white pine price is $21.22. Take Minnesota, the average price is $17.46. Those are probably the largest producing places.

That total average is $18.32 for the various states.

The report I have here is a publication of the Forest Service, United States Department of Agriculture, circular 122. It is entitled "Lumber Cut of the United States, in 1906;" issued on December 11, 1907, just out. The year 1903 was a good year but during 1904 the year was a bad one. I think the average variation between January, 1904, and January, 1907, was greater than the variation between January, 1905, and January, 1907.

EVERETT G. GRIGGS for the complainant (Record, 901):

I am President of the Pacific Coast Lumber Manufacturers Association, and am connected with the St. Paul & Tacoma Lumber Company, located at Tacoma. I am second vice-president of that company. The mills of that company are located at Tacoma, Washington, and the output of the mills there was 120,000,000 feet last year. We have $1,500,000.00 capital stock, which is all invested in our property. There are no affiliated

or subsidiary companies connected with the St. Paul & Tacoma Lumber Company. We have other companies in which we are interested. The parties in interest are interested in other companies. We live at Tacoma and are interested in a good many things there.

I think a year ago I figured up about the freight which our companies pay per year to the Northern Pacific Railway, in reference to something I was asked to prepare, and I found that companies in which we are interested pay them something like $800,000.00 in one year freight. That is, the companies in which officers of our company are interested, in developing the country out there.

The St. Paul & Tacoma Lumber Company own timber lands. We supply our own logs and buy logs in the market. I believe that since we commenced operations, which was in 1888, when we organized our company and went into that country —and I have worked up in the mill until the last several years, when I have been vice-president of the company—in my connection with the development of the business, in the efforts which we have made, located as we are on tide-water, and on the Northern Pacific, and developing every possible market we could develop for our output, that there is no question in my mind, but what this advance in freight rates cannot be absorbed. I do not answer particularly with reference to our own company, because I think we can close down and reduce our output shipped, foreign and shipped elsewhere, to our own yards. We have 12 in western Washington, established for this very reason, and we have fortified ourselves by 12 years' business, so that we can pass through a panic and find a market for our lumber; but I believe it will so affect the mills that are located on the rail routes, that are dependent absolutely on this market, and the market which is created locally in their districts, for the use of the better grades of lumber, which are re-manufactured and then shipped, that it will put them out of business. I do not believe that a mill that is not able to stand the $3.30 on common lumber is going to weather the storm.

To a certain extent is affects every mill. The mills that are on the rail shipping points, if they attempt to ship their out-put by paying locals, and getting into the tidewater markets, that is generally ruined by the too much dumping of stock there, and we are generally located on tide-water, so that we can meet that competition. The only way that the rail mills can get into that market, is, when our price is advanced

to such a point that there is a profit in rehandling the stock, they may be able to ship some of their stock. I think to that extent the rail mills would have to handle the business.

There was a billion, three hundred thousand, of the lumber that is shipped east, shipped by rail, that represents clearly one-half, possibly, the capacity. That is a little less than one-half—about one-third, perhaps. But it represents more in practice, because you take our own case, and take the Puget Mill Company, the Port Blakeley Mill Company, which has recently burned, they are out of business now; they are heavy competitors of ours in export business. Take these large mills, and they are located where they can ship to California and the export markets. I think that when business picks up we would be in the same relative position to the other competing woods that we have always competed with, and would be in a position to hold our own, unless the yellow pine and white pine people had a change in their rates. We have fought for a territory for some years against the competition that we have met with, which competition has been very keen. Our company has spent $200,000.00 since it has been there in advertising and developing the industry. It has brought people out there to test our wood, and we sell largely all over the world; we have done that in our effort to increase the market for our stock. We are probably better equipped than most of the mills out there because of our long continuance in the business and the connections, we have made to handle the various grades of stock that come out of our mills. We established our own yards, which we control, twelve of them in Eastern Washington. We have our own yards in California —or an interested yard in California. We did have, some ten years ago, a yard there and sold out, and then we established another one at Los Angeles, and we have today, yards all over the country that we could reach—Spokane and closer to Tacoma.

I do not think under conditions as they existed on November 1st, 1907, that the lumber mill industry in Washington could absorb the advance in rates. I do not remember the figures exactly relating to the total amount invested in the state in mills and logging outfits. We have in our plant all our capital invested, $1,500,000.00, and there are 15 or 20 others like ours. I should say that the gross pay roll in the lumber industry runs between $50,000,000 and $60,000,000. That includes the allied interests to the logging business. Logs are part of the cost. It would be a little more than

that I should say. This advance in rates would represent approximately $2.50 a thousand. I think it would average that on the lumber shipped from Washington. That is, assuming the shipments were the same as in 1906. For one concrete instance, I think I heard a railroad man say it meant seven hundred thousand dollars to his company last month; that is, he would have been affected to that extent compared to the year before. That was the Northern Pacific Railroad.

I feel, that representing the Pacific Coast Lumber Manufacturer's Association and the general business out there, that a good many facts have been brought out in this case, which probably have shown the Commission the effect this adavnce in rates has had and will have upon the entire industry; but as far as the large plants are concerned, I think it is fair to presume that those who have been in business long enough out there and have invested a good deal of money, that it cannot be questioned that we are going to make some money in time. We have been through panics before, and we have fortified ourselves for these conditions. Some of the men are able to operate and carry their stocks. Our own mill carries from 10,000,000 to 20,000,000 in stock. We have plenty of ground to pile it. But the relative values of what you are making and losing cannot be determined offhand and cannot be determined when the actual, final results are not evident. For instance, we have a large amount of lumber on hand today ourselves. We ship the better grades east; we ship such stock east as will compete successfully in New York and all the way across the continent, and if we cannot sell those products, and if we are driven back by this freight rate for a limited portion, it simply reduces the average price we get for our product. The business is operated on the law of averages, I suppose the same as the railroad people operate their business. I have not been able to determine from the conferences we have had with the railroad people, how they can tell they are losing so much money. We have seen their railroads in the hands of receivers. That has been true with respect to the Northern Pacific Railroad and the Union Pacific Railroad. We have seen hard times, when it took everything we had to carry our business through; we have all been through hard times, but we have all made money. The Northern Pacific is certainly making money, or at least we are sure of that from the general reports that we have gotten; and, we have been making money.

To deprive us of any territory we are now in will certainly

affect us, will affect all the mills in that section that have not sufficient capital or stumpage value to feel that they can stand this advance. We can sacrifice lumber if we can sell into another market, and our average price will still be good. The way this affected our business and I have been in pretty close touch with the selling of lumber in Australia—I can show you. In the instance I think of, one of the heaviest buyers we have had was a buyer who bought for Australia. We have sold a great deal of lumber to Australia. This buyer called on me sometime in the middle of last year. He is in close touch with the New York conditions, and he is a man we have sold enough lumber too to know that financially he is thoroughly responsible; and he informed me at that time that we were going to see an era of low prices, largely by the fact that he had definite information in New York circles that this rate was going to be put into effect. I never believed that it would be put into effect myself; I do not believe today that the Northern Pacific Railroad—and I know more about that than any other railroad—can operate their business with the demoralization that will come about by reason of this increased rate, resulting in a reduction in the demand for lumber; I do not believe they can operate their business without restoring the rate, or giving us a better rate, that will expand our territory.

This man informed me that he would not place any orders for lumber to Sidney, Australia, because our prices were too high, and he expected a drop in the business. That is the way it has affected the export business to Sidney, Australia. We have shipped eight or ten million there ourselves. But the whole effect of the agitation of the freight rate at that time gave us a declining market, and we, who have often carried on our books, orders for six months in advance—and you have to do that in order to handle steamers and vessels—felt the effect of it in every market we reached, simply because the buyers are shrewd, and they are better posted than many of us—and he certainly was better posted than I was because he gave it to me straight from his conference in New York, that that rate would be put into effect.

I know the rate of movement of cars per day on the Northern Pacific Railroad they have moved in two or three comparative years. I only know the facility with which we can or cannot get cars. A condition prevails at Tacoma that I have not seen for four years and a half. The railroad people have asked us if we needed any of the cars which were

idle in the yards; they have telephoned our men to find out whether we had any orders to ship. The condition was so acute, and has been for two or three years, that we have pushed our business stronger to other markets. You take a plant of our capacity, and it gets out of one market and somebody else gets into that if they can get cars, but the market is so sensitive, and it is cut up in such a way that if we get out the other fellow gets in, and I have always felt that if we were making money in the other territory that the other fellows were entitled to that territory into which they got. The side tracks as full of cars in our vicinity now. I can only tell the average cost of the manufacture of lumber. I do not think there is any way of telling the precise cost of any part of the product.

Cross-Examination. (Record, 916.)

Our people have been in Tacoma since 1888, 1889, and I went out there, and in 1890 I went into business. In 1894, one yard was established in Eastern Washington, and then every year we could put in a yard, we put one in as that country developed. Our mills were built in 1888, and we began shipping over the Northern Pacific I think in 1899. Those mills were built in pursuance of a contract our people made with the Northern Pacific Railroad, I think, in May, 1888. I do not think we had a contract with the Northern Pacific Railroad, by the terms of which our people agreed to build two mills. We never agreed to build more than one mill.

(Griggs' Exhibit No. 1, offered in evidence, record page 919, being the contract between the Northern Pacific Railroad Company and Chauncey W. Griggs and Addison G. Foster et al., referred to by the witness. This contract is copied in the record from pages 920 to 949, inclusive.)

(Continuing) Mr. Griggs testified:

That is our regular contract. That was signed by Colonel Griggs, Mr. Hewitt, Mr. Jones, and the parties interested.

We did not make ninety million feet of lumber each year since that contract went into effect. We have complied with that contract or it would have been cancelled I suppose,—to the extent of our ability to get cars to ship it. In 1888, I think the rate on lumber from Tacoma east to eastern terminals was 60 cents, and during the period of that 60 cent rate most of our eastbound lumber went generally speaking along the line of the Northern Pacific Railroad; we got into the

Dakotas possibly. I cannot give you just where we did ship. The country was then undeveloped. We shipped wherever we could get in with the stock, and we picked the cream. We were about the first people out there developing this eastern business. We have always had the pine and the other woods to compete with in the Dakotas. We could get into the Dakotas with very little stock against Minnesota, Michigan and Wisconsin pine, except on clear absolutely perfect stock in 1888. I cannot tell you what proportion of this 60 per cent. of our total cut after May 2nd, 1888, went to the Dakotas. I cannot remember the other points to which our cut went. I cannot tell you. I can tell you how much lumber we shipped by rail but I do not know where it went. I can give you the amount of lumber we have shipped by rail since 1890, but I have not it with me. We can show what we have shipped by rail but I have not the figures showing the destinations. That is, in fact, for all kinds of lumber shipped by rail without regard to where it went.

At that time there were hardly any people in Eastern Washington. There were very few people in Idaho. There were not many in Western Montana that I know of. I think we shipped a good deal of this lumber to the Chicago, Milwaukee & St. Paul Railway Company. They took it, I think, at Minneapolis, St. Paul or Minneapolis. As years went on we developed a good deal of car building material. We shipped a good deal of car building material to the railroad people, and shipped some to the yards as they were established along the line. We kept traveling men along the line to solicit business, and worked up a large business that way. I could give you the dates when these twelve yards were established. We started in 1894 with one yard, the Yakima, and as the country has developed, we put in others as the conditions warranted us to do so.

I am President of the Pacific Coast Lumber Manufacturers' Association, and I received a request from Mr. Beckman for a statement of the effect that this rate would have upon this business. I do not think I answered all the questions he had in there. I attended the hearing one day before Judge Hanford on the application for the injunction. I did not hear Mr. Beckman's affidavit. I did hear the reports from the various lumber companies. Ours was not among them. I did not make a return to Mr. Beckman of the loss I would suffer because I could not estimate it. I do not think anybody else could either, exactly.

We manufacture shingles. Approximately the labor will cost from 50 to 65 cents. It depends on the condition. It is about the hardest bunch of men we have to deal with. I should say off-hand that is the cost of labor on shingles. The material depends on the price of cedar logs. A thousand feet of cedar logs will make about 7500 to 8000 shingles. The range of price of cedar logs during the past five years has been very high, a very big range. Cedar logs have sold as high as thirteen dollars, fourteen dollars or fifteen dollars recently. The lowest price in the last five or six years was four or five dollars. Sometimes we have left it in the woods. We gave it away or left it in the woods when we started in business. It would be hard to tell the range in the price of shingles during the last four or five years. We have received for shingles in the last four or five years all the way from 75 cents to $2.25.

We will assume that Star-A-Star is a standard for this examination. That is generally the basis we figure on, the Star-A-Star. $2.25 is not the highest price we have received for Star-A-Star. I think $3.75 is the highest price. When I said the range was from 75 cents to $2.25, I probably did not give that quite the consideration I should have given it. That is due probably to the fact that we had a car we could deliver, and they were willing to pay a premium for it. I do not think it was up to me to produce a set of the St. Paul and Tacoma Lumber Company's price list for a number of years back. I do not think it is necessary to bring that into the case. That is the way I looked at it. We never asked the Northern Pacific to reduce their rate if we were losing money and we did not think it was necessary to talk to them if we were making money.

Mr. Blakely asked me for a price list of the Pacific Coast Manufacturers' Association. I did not produce that.

(Witness was then handed a note signed by himself, addressed to Mr. Henry Blakely, General Western Freight Agent of the Northern Pacific relating to the production of price lists, which note was offered in evidence, record page 965, marked Griggs' Exhibit 2. This Exhibit is shown in the record on pages 963 and 964.)

I don't think I could furnish a complete file. I did not have a complete file and I did not care to give a few. There was absolutely no motive in that kind of a reply. In saying I did not care to submit them I meant that the lists do not mean anything. I do not think those lists pertain to this trial at all.

From my knowledge of the business of our Company I say that from 1889 down to the present time our rail shipments have not given us a profit of 15 per cent. I cannot tell you offhand whether our cargo shipments have given us a profit of 15 per cent. I can tell you, generally speaking, but I cannot tell you just what the cargo business and the other business was. I know we have not made any such money in each of the twenty year's operation. It was up to the Northern Pacific to cancel the contract if we did not comply with it.

When we started operations we had never cut a stick of cedar or any hemlock and only spruce as we would come to it. The market did not warrant handling it. Since the existence of the contract I think we have shipped all those kinds of lumber. Generally speaking, I have an idea as to the percentage of each that we have shipped. Out of one hundred million feet cut we would probably cut about 65 per cent. fir, say, and more than that. We would cut about sixty-six million feet of fir and nine million spruce and hemlock, and the balance cedar or something like that. Our fir varies so much I could hardly tell you where the most of it goes. We would ship a great deal to Chicago on contracts for car construction work, to car construction companies a great deal, and a great deal to the yards, and a great deal to our own yards. Except in spruce car sidings, fir lumber is altogether used for car construction. Spruce siding was used. I do not know how it is now. We never got enough of Hemlock and spruce so we could build up any trade on it. We would sell it locally, to work it up in boxes, but we would ship our clears east; our clears go into bevel sidings.

We began to ship hemlock and spruce as we came to it in the timber that we were operating. I cannot tell you about what year that would be. I suppose we cut some spruce back in the 90's. We hardly made a fairly good profit on hemlock and spruce. There is nothing we could sell except just the clears and the cost of the logs is sometimes such that we would have to waste a good deal. Carrying that east we would always be against competition. We had to introduce these woods largely; they were not known at that time. We had to work them up, and it was only after 1900 and 1901 that we began to make a reasonable profit on them.

Our Company always operated conservatively, and we never took a dollar out of the business, I think, until 1897. We made money on our fir at different times. It depended on how we operated in the timber, and in what timber we were operat-

ing, and how we cut the logs. If we cleaned the country up, just cut the cream, we might make a little money. We never cut below a certain diameter. I know it is not a fact that the Pullman Company uses nearly altogether spruce and fir except for inside. We are always in competition with them; the southern pine and yellow pine is in competition with us, and a year ago I think I was beaten by yellow pine. I don't remember whether it was the Pullman people. I cannot tell you about the Pullman people. I don't remember at what we offered that lumber.

I think the pay-roll on the lumber industry over the state of Washington was fifty million dollars. Over three billion, probably four billion feet are cut in the state annually, including eastern Washington. On the logs and lumber I suppose the pay-roll on that alone would be $12.50 per thousand feet. A large item of expense in the handling of forest products is labor, and always has been. It is not the tree that costs so much.

I do not remember exactly, but I got the impression that this Northern Pacific man said that this rate would make a difference of seven hundred thousand dollars a month to his road. I do not know anything about the records of the Northern Pacific. I simply quote that statement just as it was given to me, and do not undertake to vouch for its correctness. But I merely give it as an impression. It was a general talk and conversation. I knew this meant a great deal to the railroad company. I got the impression that it meant seven hundred thousand dollars per month. There is no use of your questioning me on it. That is my impression.

I do not know anything about the percentage of the requirements of the retail lumber yards in Nebraska, Kansas and other Missouri river points. I run twelve yards of our own, and I know something about the yards in eastern Washington, but I do not know anything about the district to which you refer. I know we cannot compete in Nebraska and Kansas on the common stuff and dimension lumber, not so we can make any money, on the old freight rates. There are possibly some points we reach in Kansas and Nebraska in the Missouri river territory, but let me state that in connection with the lumber yards in those particular points, if our men go to them they will say that they use a large percentage of common lumber, and they will say they will buy that in the markets where they can get that right, and very often they will make up a car of what they want.

The St. Paul and Tacoma Lumber Company has the largest double capacity mill in the state. We have two mills. I won't say exactly what we have sold or what territory we have reached, but I know we could not get into Kansas and Nebraska with anything except the upper grades as a rule. About 75 per cent. of the production of the Pacific coast states, 68 or 70 per cent. is common and dimension lumber. In selling our common and dimension lumber we strike an average; we go on the law of averages. I do not figure what the common costs us to produce; I figure the average. It cost us last month on the average to produce lumber, as I remember, $5.90 on the pay-roll expense alone; that was October. I have not the figures of the average cost for producing lumber for the year 1906 in my head. At the present time, very little of the common and dimension yards' lumber can find a market in territory taking a 50 cent rate. The bulk of our business up to say, September, 1907, and at all times to the Missouri river territory, has been clear finished and beveled siding, and clear siding, and shingles. I do not think we have sold much ceiling or much flooring lately; maybe we have sold some. Flooring is the best grade stuff we make. They get flooring in Kansas and Nebraska that beats me out, and I can make more money somewhere else. It depends on our export business. If we get into another territory we generally go after that, and if we cannot get into this territory and sell anything we can find some other place. I think the raises in rates into Kansas and Nebraska territory, and east, will affect the sale of our common and dimension stuff. We have a good many mills, and if they cannot ship their low grade in there will get into our other markets, and in that way it will affect us. I would not say that is the only effect. It affects us if we want to go into that market and have no other market. We have worked that market pretty strong for certain grades that we had to move there. Not very much common. We do not sell very much down there. We never particularly sought that as a market except for the grades we could meet competition on.

We never sold common in Colorado. The price was too low generally for us there. We have sought markets all over the country wherever we could reach them. If it was timbers it might be that it would go further east than the Missouri river. We have shipped ladder stock and wind mill stock. That is, we generally ship the good grades, but some others ship common. There has not been a very heavy demand for that but it all helped out; but some was shipped.

We shipped a good deal of ladder stock, a good deal of it to New York. I can hardly tell you how much. We ship that all over the country, and into New York state. The freight rate on that ladder stock to New York state is 72-1/2 cents. We were able to ship that stuff at 72-1/2 cents. We have a man in New York. We ship more or less lumber there.

Outside of this ladder stock we have shipped east of the Missouri river, car material, car stringers, timbers, stock that we could compete with in the yellow pine market and the southern pine market. We have left a good deal of that market east of the Missouri river for ordinary common boards, and ordinary four by four's, and small timber and things like that, to other people; and that was the reason we established our own yards, so we could handle our plant. I have endeavored to work that market, but I found I could not work it to any advantage to ourselves compared to the other markets we were able to find.

We send a man to get business, and we meet competition, and if we cannot handle it in any other district, where we can make more money, then we send it into Colorado, Kansas, Nebraska, or any point east of the Missouri. Depending on the competition we would meet at that time, we have found other districts where we could make more money than we could if we sold this stuff in that same territory on the rates as they existed previous to the advance. We have sought every territory we could seek where we could place our outputs. We have never found any sale in that territory for any considerable quantity of our common stuff without a sacrifice to us.

(Witness was here shown a price list and asked whether he sold on that list or pretty close to it.)

Continuing Mr. Griggs testified that he did not. That list is made a dollar higher than the ordinary list of mills I think. That list is a dollar higher than anybody else on the Coast, I think. We got the prices on that list sometime. We were not able to ship the stuff, so we did not get the business. When that list was gotten up, business was excellent in our districts, and we could not work that and so I thought we might as well have put out a list that was $5.00 higher and keep the inquiries away. We could not ship it. We aimed generally to sell on our own lists. I do not think it is a little lower than the list we had in 1906. Maybe some items have changed.

(Griggs' Exhibit No. 3 offered in evidence, record page 989, being the price list referred to in the testimony.)

We compete with Portland but we do not compete with Portland mills, except in Chicago, possibly, and in New York. We cannot get into their territory. We both ship ocean I think. Inman Paulsen and the Eastern & Western Lumber Company, at Portland, possibly ship more to Shanghai, China, than we do. We ship by ocean all over the world. I think they do, too.

We are competing. They do not cater for a certain business that we do. Their logs run a little different. This price list does not have anything to do with Shanghai or outside; that is nothing compared to the rail business. We have a very much higher price ocean, but we do not at all times sell our ocean stuff on a higher price list. The ocean price fluctuates very rapidly and the quality of the timber that is shipped on an Australian market is entirely different from the quality of lumber we can ship east. The price list of the Portland mills would only indicate what our prices would be in the markets where we compete with them. I do not think their lumber is altogether the same as ours. They have a good deal of red fir and some yellow fir. They cater stronger to the China trade. There is more No. 2 I think, than there is on the Sound. It depends altogether on the section you are operating in, whether your lumber runs higher in clear stuff than the Columbia River stuff. I do not know whether our lumber runs higher in clear than that. The timber of the Portland mills, is more No. 2 than ours. They get some pretty good timber from the State of Washington though. I imagine their yellow fir cuts about as ours does. I have seen some very good logs from some of those mills.

We generally figure 2000 pounds for 1000 feet of kiln dried stock that we sell east of the Missouri River. That is what we figure our weights on. This kiln dried stuff does not weigh very much. It depends on the character of the log. It might be a little less. We have very carefully constructed kilns, and operate very carefully, and bone dry our stuff and cook the pitch out of it. Some of our stuff weighs a little less per thousand. It would not vary 100 pounds. I am pretty sure about that. It might be a little less. I do not think I have ever seen it get below 1875 pounds. It depends a little the way you make it whether it is one-half inch or three-eighths or five eighths. I do not think we have inch boards that come down to 1800, unless they are dressed three-quarters.

We never dry our shingles below 160 or 165 to the 1000. It runs along in there. The production of our mill runs common lumber or poor lumber, depending altogether on the character of the timber we are operating in and the markets we are able to reach. We can increase our output on certain timber if we have a good market for that character of lumber. We aim to do that, and so it varies. I think one year we had 68 per cent. common or better, and the balance was select and better—no, not the balance; all but 5 per cent. Probably 2 to 5 per cent culls and stuff we could not market. Sixty-eight per cent. common. That is the year I think I figured on.

I cannot give you our total consumption of loss. We buy a good many logs; we buy a good deal of timber that the Northern Pacific Railroad Company does not have anything to do with. We cut from 100,000,000 to 120,000,000 a year. In 1901, we built the second mill and increased our capacity. We aim to control our output by the condition of the market. We have two mills, so we can close one down, or run them both, or run them night and day. We have about 500,000 capacity.

I think we sell common and dimension stuff in Minnesota. A good deal when the price gets where we can—well, they are specialties and things that they cannot get elsewhere. We sell some common stuff like common boards and four by fours and that sort of stuff in Minnesota. It has been a profitable market. The fluctuations of the yellow pine and other woods keep us chasing for business. I do not think we got much business in 1906 in Minnesota. We sold some big contracts to one concern, I think in St. Paul. I have forgotten what it was; I think it was a railroad company that bought some of that, or a contractor for one of the railroads there. It was the average run of timber 8 by 16 and 12 by 12 and 8 by 8; 24 and 32 feet long, or something like that. I think we sought and obtained a market in Minnesota in 1906 for smaller size stuff than that, and common boards. Our records will show what we shipped altogether, but I have not segregated it by states. We sold some hemlock boards one year to the Minnesota Transfer.

We have bought logs in the open market. The amount of our output that we buy that way varies; sometimes one-half, sometimes one-third, and we generally aim to buy almost as much stumpage as we cut. I cannot tell you how much

timber is remaining on the lands covered by this Northern Pacific contract. We have a good many million feet of timber still covered by this contract.

Redirect Examination. (Record, 1000.)

Referring to this contract, containing the stipulation: "and the company;"—meaning the railroad company—"Agrees that the rate of freight on lumber and other products of said timber from Tacoma to points north of the latitude of St. Louis, Missouri, shall be as low as from Portland, Oregon, to same points," they have not complied with that. They have not given us as low rate as from Portland, Oregon, to the same points north of that latitude.

Referring to the stipulation in the contract as follows: "The Purchasers further hereby jointly and severally covenant and agree to and with the company that they shall ship at least 60 per cent. of the lumber manufactured from the timber cut on the land aforesaid to points east on the Northern Pacific Railroad and beyond, provided that the company shall, so far as it lawfully may, fix such rates and charges for transportation, as will enable the purchasers to compete in the interior and Mississippi Valley lumber markets," this advance does not give us such rate as will enable us to compete in these markets.

It puts us out. This contract does not bind us to pay sixty cents a hundred pounds. That was the existing rate to the Missouri River at the time the contract was entered into. The Northern Pacific was the whole thing in that country at that time. Under this contract we purchased whatever land the contract says. Tacoma was just then commencing. The railroad company retained the coal, I think. The purchasers named in that contract were not my predecessors; they are my present partners. I was working in the mill in those days. We were supposed when that contract was made, to have rates to compete. I think I made a demand upon the Northern Pacific Railroad under the terms of this contract for a rate into Missouri, Kansas and Nebraska territory. I have talked that at different times. We never saw fit to cancel the contract because of any such breach. We worked up other business. The penalty is that we are not required to ship into those territories. That was all. I never had any controversy over the workings of this contract.

The reason we have bought logs in the open market when we could take timber at 50 cents a thousand and ship it into Tacoma under this contract is we think our timber is worth considerable money, and we have held on to it for fifteen years, and panics have not broke us, and we are able to hold on to it some time yet. The price we get for our cargo shipments and for our rail shipments on the average of the same grades fluctuate. We got eighteen dollars this last year for export. We do not sell the same grade east. The common lumber might go to California but not export. We get higher for export lumber than for rails. It fluctuates. Sometimes for export business we get very high prices. I can only tell you the difference in the cargo price of 1906 as against the rail price in 1906 for the same grade of lumber, on a comparative basis on lists. Export prices last year ran from fourteen dollars to sixteen dollars and eighteen dollars; and No. 2 on that list would be two dollars a thousand less. It is entirely a different trade and entirely a different market, and an entirely different method of shipment. We handle it by steamers or big cargoes and assume the demurrage and get a different grade of lumber; the prices on the rail list I gave you, I think the price was fourteen dollars or possibly less, and a dollar off would be about thirteen dollars. That same grade of lumber might be figured at thirteen dollars. Probably the difference would be a little more than over two dollars or three dollars sometimes. Today it is off about five dollars. You cannot sell it. My mill for the first time, has not any export orders on its books. We are loading a government contract today, or we would have to shut down. I said that this increase in the rates affected the export business on a declining market.

WILLIAM A. WHITMAN (Record; 1008.):

I reside in Tacoma, Washington; I am connected with the Tacoma Mill Company. Have been connected with it during the past ten years with the exception of two years, as their Tacoma sales manager. I am acquainted with the market price of lumber and the cost of producing lumber at that mill. The capacity of the mill is eighty million or ninety million feet per annum on a ten hours' run, and in some years we have sawed eighty-three million feet; last year about seventy-two million feet, and this year it will be about the same.

I am familiar with the cost of logs and the cost of producing the lumber at this mill, more particularly the last few years. The Tacoma Mill Company buys its logs in the open market. During this year the average price of logs is about $11.25 or $11.50 a thousand feet. Last year it was about a dollar and a half less. Our cost of manufacturing the lumber which we ship east by rail, on board the cars at the mill, will run about $7.00 per thousand feet. The proportion of our total cut that is shipped east by rail varies. It runs from about 12-1/2 to 17-1/2 per cent. This $7.00 mentioned is the total cost on board the cars at the mill. That would be in the neighborhood of eighteen dollars or nineteen dollars a thousand feet. That has been this year the average cost of production to the Tacoma Mill Company, up to the present time. Last year the cost of production was less. The log price was about a dollar and fifty cents less, and the labor price and supplies and such things were in the neighborhood of one dollar or one dollar and twenty-five cents less. The selling price of lumber which costs us eighteen dollars to manufacture has been ranging about nineteen dollars and fifty cents to twenty dollars and fifty cents, so there has been a profit from one dollar to two dollars.

Cross-Examination. (Record, 1011.)

The total cost on board the car of the lumber we shipped east by rail was eighteen dollars or nineteen dollars a thousand. That was our F. O. B. cost. Our selling price was in the neighborhood of about twenty dollars or twenty dollars and fifty cents, along there. That was not the average price of our cargo and rail shipments. We have just one mill and the average cost of our stuff that went by rail was eighteen dollars or nineteen dollars. I am not able to tell you the average cost of what went by cargo because that manufacture is entirely different, a different character of stock, and the orders are entirely different. There is no theory about distinguishing the cost of manufacturing any particular kind of lumber; we know it quite accurately we think. Our rail shipments east will run from forty-five to sixty per cent., what we call clears and selects. The other part will run common, or the lower grades. The upper class of stock is kiln-dried and surfaced, and a great deal of it bundled and shipped by rail; and the other portion of it, the common

lumber, is surfaced only. That accounts for the high cost on that class of stock. The logs are all manufactured at the same time. Part of the output goes by rail and part of the output goes by water. Part of the common will go by rail and part of the common will go by ship; part perhaps will go by ship. I did not say that the stuff which goes by rail costs us eighteen dollars a thousand, and that which goes by cargo costs us nineteen dollars a thousand. We know what our total cost is approximately of that which goes by rail. We know approximately how much we ship by rail and approximately what that costs. You cannot subtract and find out how much is the cost of that which goes by cargo for the simple reason that that which goes by water is treated differently from that which goes by rail. We know our total average cost. We can tell what our average cost is. We cannot tell what the clear lumber costs that came out of a log. We cannot tell you how much the common lumber costs or the other grades of lumber that come out of the logs. There is one general average cost; that our total labor cost for the year is so much money, and our supplies are so much, and so forth, all the way through, and we manufacture so many million feet of lumber. It is very easy to determine what they cost in a way. Of course that is not a fixed cost, nothing about it. No man can estimate his probable losses or depreciation, and so forth. You may have a very serious accident happen right after the first of the year, after you have taken an account of stock, and so forth, which might take probably all your profits that you made during that year.

This statement of cost both by rail and cargo is not exactly an estimate of the cost, it is fairly well fixed. That mill was established in 1868, about forty years ago. That was before the railroad was built, and it was established only as a cargo mill, of course. It has been running ever since it has been built; cargo at one time entirely, and then part cargo and part rail. The rails got in there about 1888 or 1889. The proportion that goes by rail and the proportion by water varies in different years. Last year, 1906, we probably shipped about fifteen per cent., maybe more than that, by rail east; and then quite a quantity of it was used locally in Tacoma, and quite a quantity that we shipped to factories in Tacoma, so I cannot tell now.

We have a shingle mill at Kangley. The cost of manufacturing shingles varies. It costs about seventy-five to eighty

cents to manufacture Star-A-Star shingles. We kiln-dry our shingles. We have had shingles as light as 125 pounds, but the average weight will range in the neighborhood of 135 and 140 pounds. We think we manufacture about the best on the Coast. Our price varies. We have sold as low as a dollar and a quarter and up to three dollars and a quarter. During the time we have manufactured at that point, during the past five years or a little over. Those shingles go very largely into North Dakota, although we ship them all over the United States. The cedar shingle can not take care of itself almost anywhere. I was two years in the shingle business at a place called Porter, Washington, on Gray's Harbor border, and I lost money there and sold out. That was in 1898 or 1899. The price for shingles then ranged from $1.10 to $1.40 or $1.45. I do not remember how many shingles we got out that year. I lost about five thousand dollars on two years' business. That same business when shingles got up to three dollars and forty-five cents would have done pretty well; but we sold very few shingles at those prices. Our cedar shingles meet in competition in some markets with cypress. We also meet in comeptition with cedar shingles manufactured in Wisconsin and Minnesota, and also the white pine shingles compete with us. A great deal of the competition we have is among ourselves. The trouble is generally that we are manufacturing shingles eleven or twelve months in the year, when the consumption is only during a period of approximately eight months. We are always ahead of the market. The result is that we cannot make any money. Our competition at the present time is very largely with our own cedar shingles. I do not mean to say that white pine shingles successfully compete with cedar shingles at any place where they are shipped any great distance. But, the price of shingles of late went up to $2.60 and $2.75 and just as soon as it did that we came into competition with the patented roofing, felt roofing. In coming here I noticed that the C., B. & Q. Railroad Company were covering their buildings along the tracks with galvanized iron shingles. I noticed a great many buildings in the treeless prairie states that were covered with felt roofing, and where formerly our salesmen would run against one man possibly selling that roofing, I guess there are ten or fifteen or twenty such salesmen on the road handling patent roofings now; and the result is that during the past three years there have not been as many

shingles shipped from the State of Washington—or during the past two years, this year and last year, as heretofore. The shipments have fallen off on account of that competition.

The cost per thousand of cedar shingles on board the cars in Washington in 1906 varied with the log prices. My recollection is that the logs were selling at from eight dollars to ten dollars, which would make the cost run approximately $1.60 or $1.70 on board the cars per thousand shingles. During this year the logs went up to where they were selling for twelve dollars to fourteen dollars a thousand, and consequently the cost would be in the neighborhood of $2.20 to $2.30 or $2.40 per thousand. It is estimated to get ten thousand shingles out of a thousand feet of logs; but I understand that a great many mills have not been able to get more than eight or eight and a half. Generally, as the price of cedar goes up, the sellers of cedar logs have things under their own control. This saw mill of ours at Tacoma has been generally rebuilt. We are rebuilding it in part almost every year. We have never at any time made any large extensive improvements that would be considered as a rebuilding. There is not a year goes by that we do not take out some of the sills and posts and such things and replace and line up. I would be satisfied if I could get an average profit of ten cents per thousand the year 'round.

The cost to us to manufacture shingles is about seventy-five to eighty cents a thousand, and that is labor and supplies. It does not include the logs. We sell some of our common dimension stuff and common boards in the western part of Nebraska. We cannot reach the eastern part with any common lumber. I am talking now about the old freight rates prior to the raise. We have tried to sell that common lumber in the whole State of Nebraska, as well as other places. We could not get in there on account of competition with yellow pine lumber. We obtained a market in a small portion of Kansas and Nebraska for this common dimension or common board lumber. We sold some of it in the western part of Nebraska; on points on the Burlington cut-off, from Alliance to Denver, in from Scott's Bluff and that locality, we have been able to market some common lumber. That is comparatively all we were able to ship into the State of Nebraska. The actual sales were very small compared to our total output. We have not been able to sell that kind of stuff in Kansas. We shipped a little, but not a great deal into

Kansas. If you confine it to common lumber, we are able to sell but very little in the State of Kansas. We are able to sell some of that grade of lumber but only in such sizes as are difficult to obtain in white pine or hemlock, or yellow pine, that is able to sell that east of the Missouri River and east of St. Paul. We are unable to sell common boards or common dimension stuff in that territory. Have not been able to sell much of that kind of stuff in Minnesota. We sell a little in the western part of the State. We have been able to sell a very small percentage of our total output in eastern Minnesota, eastern Nebraska, the State of Kansas, or any point or place east; that is to say, of common boards and common dimension stuff. It would be very much less than one per cent., even. Just as soon as we get into the 50-cent territory we cannot sell common lumber unless it be in special sizes. We are restricted entirely to the 40-cent territory. We cannot ship common lumber in very great quantities even to the far eastern part of North Dakota. We are restricted and limited as soon as we get near the white pine section. That is 40-cent territory up there. On account of the competition of white pine, hemlock, basswood and that kind of stuff, we have not been able to reach even that territory on a 40-cent basis with this class of stuff.

By common lumber in special sizes I mean in such sizes as two by twelve, twenty-four, twenty-six, twenty-eight and thirty-two feet long; three by fourteen, three by sixteen, or two by sixteen and two by fourteen feet long. That is exceedingly long stuff. Large timbers. That is stuff which the white pine people can produce, but it is at a much higher cost than smaller sizes. The reason we can sell that variety of lumber against yellow pine in these eastern districts is on account of the freight rate. Their freight rate is higher. They have a twenty-four cent rate into Chicago, and a thirty cent rate into Minneapolis and St. Paul. Their price has advanced on those sizes. They do not have to make as much more money for that class of material on account of the different character of their logs as white pine manufacturers. For these special sizes we do not get big prices. We lose money on some of them. What we get depends on the character of stock. We get more than we do for the two by four, twelve. When things are normal we get between twelve and thirteen dollars F. O. B. the cars at Tacoma. The first of August we were getting something like fourteen dollars and

fifty cents at Tacoma. What we get F. O. B. the cars at Tacoma for these special sizes of material that we are able to ship east of the Missouri River depends upon what the stock is that we are selling. It depends on what the special size is. I do not know what the other people sell their stock for. I know what we sell ours for. It is a difficult thing to remember all the prices in the pricelist, where you have hundreds of different prices.

We would sell two by eight, thirty-two feet long, F. O. B. the cars at Tacoma, per thousand feet, when common lumber was selling for fourteen dollars, for about sixteen dollars. That is for thirty-two feet long. Two by twelve would be about seventeen dollars and fifty cents on board the cars at the mill, thirty-two feet long. I would explain that there is a very limited demand for that kind of stock, that the quantity marketed is very small. Assuming that common boards were selling in Tacoma, one by eight boards, F. O. B. the mill at Tacoma, at fourteen dollars and fifty cents, the four by fours, thirty-two feet long, would then be worth about seventeen dollars and fifty cents.

A forty cent rate will enable us to sell a much larger quantity in Nebraska and Kansas. We have a forty cent rate now in a part of Nebraska. The yellow pine rate is thirty-four cents to Denver. We sell some of our common boards and this common dimension stuff in Colorado. Not much, however. Not very much. It is just a fraction of one per cent. of our total output. Our freight rate into Denver is forty cents. The yellow pine freight rate into that same territory is thirty-four cents. I do not think we have any Minnesota competition there at all. We have rail facilities there from our mill. We have not shipped a great quantity under the old rates in any year of common boards and common dimension stuff in Denver or Colorado. Of course I am not in a position to tell just what, but there has been no great quantity shipped from our mills.

I do not know that I am familiar with what other people generally are doing in that section. I think any person manufacturing lumber situated as we are at Tacoma could sell in that territory, or would seek to obtain a market in this territory for common boards and common dimension stuff in Colorado on the old freight basis for this reason: the quantity of fir lumber that goes into Denver is dependent very largely upon the selling prices for yellow pine lumber. That

is a kind of meeting ground for the mountain pine and the lumber that is manufactured down in New Mexico comes up into that country, and it is a pretty fierce battle ground as far as competition conditions are concerned, for all kinds of lumber. Depending upon the prices of competing articles, Denver has been just about the dividing point in the past between the lumber with which we come into competition and our own common boards and common dimension stuff, our rough stuff. We are always in there with certain classes of stock; but as far as we are concerned, we are not able to do a great deal in Denver on common lumber.

We do not keep any record of common dimension stuff and boards, etc., separately. We just keep a record of the total cut of the mill, and have them classified and divided as far as grades are concerned. As far as our mill is concerned it will run about 75 to 78 per cent., in that neighborhood of low grade stock.

Redirect Examination. (Record, 1042.)

With the old rate prevailing our trade would keep increasing every year. We can get orders on the old rate at this time. I may say comparatively all our shipments are into North Dakota.

Recross-Examination. (Record, 1043.)

I say we can get orders on the old rate now, because we have received them and are receiving a few, not many. We will take chances on them. We are not sending much lumber. We try to get cleaned up. We are pretty nearly getting all our orders filled. The orders we received during the last 30 days I guess amount to half a dozen carloads or maybe a little more than that, a few more. The fact is just this, that just as soon as we became informed of this proposed freight rate advance, which was in July, outside of the rumor proposition, which was earlier, we immediately notified our salesmen who covered the territory in which we market most of our rail business, not to accept business except contingent upon our being able to ship previous to the advance, and of course that immediately raised confusion, etc., and stopped trade you might say practically. We are getting a few orders. People are buying just small orders. They are filling

their actual necessities that is all; their actual requirements. They are not buying anything more, and they will not.

(Deposition of C. E. Vest, offered in evidence by complainant, record page 1046, marked "Vest Exhibit No. 1.")

It is submitted that the testimony of Mr. C. E. Vest, unsworn, may be read in evidence on the hearing of this case with the same force in effect as if he had been called as a witness and testified under oath before the Commission. The following transcript is a true record of testimony of said witness as given orally and as transcribed by a competent stenographer.

Q. What is your name?

A. Charles E. Vest.

Q. What is your occupation?

A. Lumber salesman.

Q. How long were you so occupied?

A. Engaged for several years.

Q. In what territory have you been so engaged?

A. In a number of States, including Illinois, Iowa, Missouri, Nebraska, Minnesota and New York; also, Winnipeg, Manitoba.

Q. During the summer and fall of 1907 did you have occasion to attempt to sell lumber in the said territory?

A. Yes, sir.

Q. What grades of lumber were you attempting to sell?

A. The upper grades of spruce, fir and also some cedar.

Q. Do you mean North Pacific lumber?

A. Yes, sir.

Q. Since the agitation connected with the proposed advance in freight rates on lumber from the State of Washington what, if any, effort have you made in the territory named by you to sell such lumber?

A. The best efforts possible.

Q. Describe.

A. At Winnipeg I sold one car.

Q. I want you to go into details as to time, and place.

A. Since the 10th day of November I have visited Winnipeg, Manitoba. While there, sold one car.

Q. On the new rates?

A. No, sir, on the old rates. At Minneapolis I was unable to take any orders. At Chicago, nine cars. These orders were all taken subject to approval by the mill at the old rate.

Q. Going back a little, Mr. Vest, prior to the going into effect of the new rate, were you ever in any of the territory described by you?

A. Yes, sir, I was in Iowa; also in Nebraska.

Q. To what extent were you in Iowa and Nebraska prior to November 1st, and pending the agitation of the going into effect of the new rates?

A. I was not in Iowa and Nebraska so much as in Illinois. In Iowa I visited three places; in Nebraska, but one. That was Omaha.

Q. Illinois?

A. I visited Chicago, Sandwich, and Aurora.

Q. How long were you on this sales tour?

A. About four weeks.

Q. Were you engaged exclusively during that time in attempting to sell lumber in that territory?

A. Yes, sir.

Q. With what result?

A. Result was that I sold one car at the old rate subject to approval by the mill.

Q. Could you get any orders on the new rates?

A. Could get none.

Q. Why not?

A. They stated to me that our lumber was on a par with Norway pine from the North and cypress lumber from the South, and that if the price was advanced to the extent of this additional rate they would be compelled to abandon the use of our lumber and substitute cypress and Norway pine.

Q. In other words, the consumer, the buyer would not purchase if he had to pay the advanced freight rate.

A. Yes, sir.

Q. Since November 1st, 1907, have you been over any part of this territory endeavoring to sell upon this rate?

A. My answer before would cover this; I was at Winnipeg, Manitoba.

Q. How long before?

A. Ever since the last time I was on the road east.

Q. Away practically a month and with what success?

A. I have sold nine cars to be delivered on the old rate, but subject to the approval of the mill.

Q. Then you have been unable to sell any lumber, the purchaser paying the additional freight rate?

A. No.

Q. From your knowledge of the conditions in the States named, do you consider it possible for Western Washington lumber to compete in that territory upon the advanced fright rate?

A. I do not.

Q. Why not?

A. For the same reason as stated before; the wood that I am handling, upper grades of fir, spruce and cedar is used for factory purposes. Our lumber today is about as they all state to me, at par as to price with Norway pine for one branch of their work and cypress lumber for another; that if the price is advanced they would be compelled to substitute the cypress and Norway pine.

By Mr. Kerr:

Q. For whom had you been acting as salesman?

A. For the Siler Mill Company and the Willapa Lumber Company, at Raymond.

Q. Where is Raymond?

A. Raymond is about three miles from Bend.

Q. How long have you been so employed?

A. With these two concerns, not very long. Before this I have been with the Western Lumber Manufacturing Company at Seattle.

Q. Did they manufacture?

A. No, sir.

Q. Did you undertake to sell for them about the same quality of wood as for the Raymond people?

A. The same.

Q. How long did you work for them?

A. About two years.

Q. Immediately before you worked for the Raymond people?

A. Yes, sir.

Q. What orders did you receive for the Seattle firm on any previous trips through the same territory that you have described as having covered for the Raymond people?

A. Several orders.

Q. What was the date of the last trip you described for the Willapa Company, located at Raymond?

A. Between November 1st and date.

Q. How many cars did you sell?

A. Nine cars.

Q. At what points?

A. I sold one car at Winnipeg, seven cars at Chicago, and one car at Waukegan, Illinois.

Q. Were these nine cars sold at the old or the new rates?

A. On the old, and subject to the approval of the mill.

Q. Did you undertake to sell other cars on the old rate subject to approval by the mill?

A. Yes, I have.

Q. Nine cars were all that you were able to sell at these points at the old rate?

A. Yes, sir.

Q. What were the conditions of the sale of these nine cars?

A. To be delivered at destination. They were sold at delivered price.

Q. And this price was based on the old rate?

By Mr. Abel:

Q. You recall the injunction hearing before Judge Hanford at Seattle?

A. Yes, sir.

Q. You stated that you made a trip through the States named shortly prior to that time.

A. Yes, sir.

Q. Did you endeavor to secure orders based on the new rates?

A. Yes, sir.

Q. And were not able to do so?

A. No, sir.

Q. And you got one order on the old rate on that trip?

A. Yes, sir.

Q. You confined your efforts to getting orders on the new rate?

A. Entirely.

Q. What has been your experience in selling Pacific Coast lumber previous to this time at the old rate?

A. I have been very successful.

Q. Tell generally the extent of your success.

A. As a rule trips made covering the same territory and a period of from six weeks to two months would result in from two hundred to five hundred cars of lumber.

Q. Your trip before November 1st, before the new rates went into effect, you say you secured only one order, one car?

A. Yes, sir.

Q. If you had been willing to take orders on the old rates could you have obtained other orders?

A. I could have obtained lots of them, but not on the new rates.

JOHN W. BARRY (Record, 1048):

I reside in Cedar Rapids, Iowa; we are actively engaged as lumber merchants in the retail there. Since 1884 I have been interested in the lumber business actively, giving it my personal attention, except from 1896 to 1900 in June, during which time I was connected with the lumber press, The Northwestern Lumberman and the American Lumberman. I have been engaged in business since June, 1900, at Cedar Rapids.

We handle Pacific coast woods. We handle about 25 cars of Pacific coast stock ourselves. The dealers of the city handle 125 cars and the mills handle about 113 or 114 cars. There are located there two sash and door factories engaged in the manufacture of sash and doors and interior finish. That includes window frames, and that class of stock. They told me they used this number of carloads annually.

The Quaker Oats Company is located there, its main plant. The Pawnee Oats Company, the manufacturers of Force, and that line of cereals, and the Douglas Starch Company. Judging by what they ask us at times to figure on, and which business they would have given us by reason of friendship, could we have made the same price; I should say that they use in the aggregate between 400 and 500 carloads of box shooks annually in these several industries. Box shooks take the rate of lumber from Washington. The rate on fir is 50 cents, and the rate on spruce is 50 cents, which would cover the box shooks. I am speaking of the old rate. They would not pay a tenth of one cent more for the boxes than they could buy them for. I do not know what they would do, but I do know that they would not pay one-tenth of one cent more for any one particular thing than they would for another. They said they could not use Pacific Coast box shooks under the advanced rate. That would have the effect of preventing our using common fir. We now use and have in our yards and have had for the past three years fir shiplap 8 inch fir shiplap, 12 inch fir common boards, 2x12 common fir, 12, 14, 16 and 18 feet long, and 3x12 in the same lengths; and if the price were added to, the consumers would not take the fir. In fact, if we add it to the price of 3x12 fir, we could furnish bridge planks in oak for practically what that addition would make, so that we could not handle that line of fir.

I made a little table of the prices which the several woods

are listed at, at our point, and from that, it may be judged what could be done.

The present price of northern pine for 2x12 is $28.25; of fir, $28.00. These are the two woods, in that particular item that are in competition. Ten cents a hundred pounds added to the $28.00 in fir would bring it up to $31.00 and something, and the consumer would take the northern pine, or he would take oak at about 75 cents a thousand feet more. The rate on northern pine to our points is 12 cents; and the rate on fir is 50 cents; and in the matter of 3x12's the same thing obtains. Price of northern pine at the present time, the list price as I understand it is $29.00. It comes from Minneapolis. The fir price is also $29.00, for 3x12. Those prices are delivered at Cedar Rapids, or any other point taking that rate.

Now answering the question specifically, add 10 cents 100 pounds to the price of $29.00 fir, and it brings it to $32.00 or thereabouts, making the northern pine much cheaper, and bringing the fir within a few cents of what we can furnish oak bridge planks for. Planks of this character are used in our state very largely in bridging country streams. I should say so far as I know, they are used almost exclusively or have been since the northern pine has advanced to practically the same price as the fir, on their respective rates.

The item of shiplap at our point in fir is $27.00; in northern pine $28.25. We have both, so far as that goes, but we are selling largely of the fir because it is a little cheaper; but 10 cents a hundred pounds added to it would make it higher, and would reverse the condition. The item of 12 inch boards—what is said of the shiplap is also true of the 12 inch boards. In fact it is true of all the common that we can now handle. The common lumber comes in competition with the northern pine in our market. In the upper grades of fir lumber, that competition at least is more largely with southern pine, because of the different uses to which it is put. The southern pine people make a grade of flooring which is called edge grain. That is, they make a number of grades of floorings called edge grain flooring, and the fir people also make a number of grades which they call by the same name; that is to say it is quarter-sawed, the grain stands on edge. The list price of fir flooring at our point at present is $37.00, and the price of the yellow pine is $38.25. The addition of the 10 cents per hundred pounds would of course make the fir high-

er, and to that extent put it out of the market. What is true of that one grade would also apply to the lower grades. I have given the price for the best grades. It would apply proportionately to the lower grades in each of those woods. That would also apply to ceiling and other items. I do not know that it is necessary to go into much detail.

Our yellow pine rate is 30 cents. The old Pacific Coast rate is 50 cents. Under the advance it would be 60 cents. On fir and fruit it would be 60 cents, and on cedar lumber and cedar shingles it would be 72 cents. It was 62 cents. We buy yellow pine lumber exclusively from the mills that produce the pine. We have bought from the Amos Kent Lumber & Brick Company at Kentwood, Louisiana. I took their rate because they were on the Illinois Central, which is a continuous line to Omaha, Nebraska, and I took the distance and found it to be 1,217 miles; while the distance from Seattle to Omaha via Billings, as I figured it from the railroad time tables 1,962 miles. Now the rate on yellow pine into Omaha is 23 cents, and the rate on fir into Omaha at the present time, I mean before the advance, was 50 cents. If fir should receive a proportionate rate, as I figure it, it would be 37 cents instead of 50.

The advance on rough green fir lumber of 10 cents per hundred pounds would be $3.30. Fir is produced in British Columbia along the Canadian Pacific. All that country up there is as much a fir country as the country down below the line. On rough lumber the duty into the United States is $2.00 a thousand feet. Port Arthur, the terminus of the Canadian Pacific, is on Lake Superior, on the northwestern shore. I suppose it would be entirely feasible to establish a big distributing yard here at Port Arthur, and if that rate continues, the lumber would be laid down there on a 40 cent rate, and when that lumber was sent to the United States the tariff of $2.00 would have to be paid, but there would be $1.30 odd cents margin left. Port Arthur is on the lake, and that lumber might reach Chicago or Detroit, Cleveland, Toledo, or any of those lake ports. The rate in the past has been 50 cents to Chicago and 40 cents to Port Arthur. I understand that that 50 cent rate is all-rail. At times there is a water shipment, and I take it for granted that when that water shipment does take place, there is a somewhat less rate to justify the rehandling of the stock, although I do not know. I am not familiar with that. We ship a good many

shingles from Canada. We are now, and have been for some years, shipping about half the shingles we use from Canada. Those that we buy are manufactured at sidings or slips just outside of New Westminster and Vancouver. The duty on shingles is 30 cents a thousand. These shingles are all up to the estimated weight. That is to say, the thick shingles, the five two shingles weigh 180 pounds to the thousand and the six two shingles weigh 160 pounds to the thousand. They weigh up to the estimated weights. We buy shingles from Washington, from the Pacific Coast.

The price put down in our city for a corresponding grade is the same; but we buy the Canadian shingles in preference for the better class of trade, because they take more pains in the manufacture of them and they punch them more closely. There is from eight to ten per cent greater quantity shingles in each bunch, and while the price is practically the same for both grades, that is for the best grade of Washington shingles, and these Canadians, the fact that there is a greater covering capacity in the Canadian shingles, induces us for the better trade to buy it. In other words, the duty does not seem to add to the cost to us.

When I traveled on the Pacific Coast and was familiar, stumpage was cheaper, but I do not know now. It was reported in the American Lumberman of last June that the stumpage in British Columbia and on Vancouver Island has been leased by the Dominion Government on a basis of $100 a section annual rental and a payment of 50 cents stumpage.

We supposed that the basis of the difference of the price in these shingles, the Canadian shingle being cheaper at the mill, was on account of their using Chinese and Jap labor. I do not know that they use this labor exclusively, but that is our understanding of the reason for the shingles being cheaper. There are very large bodies of cedar timber upon Vancouver Island and also upon the mainland, far larger than in the State of Washington.

In British Columbia clear cedar is used in the shingles and is not made into clear cedar lumber. Therefore there is a better quality of shingles produced there, whereas on the American side the clear cedar is manufactured into clear cedar lumber. The mills from whom we buy, manufacture shingles only. There are other mills, however, combined lumber and shingle mills, but I do not know what their practice is. I suppose they do make cedar lumber. I know that Chinese and Japanese and Hindu labor has not been used on the American side in the manufacture of lumber and shingles.

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We handle an average of a car of lumber a day, about three hundred carloads of lumber per year. Ours is a retail yard. The dealers in the city handle about a hundred and twenty-five carloads of Pacific Coast lumber a year. The mills handle two hundred. We handle about twenty-five cars of the Pacific Coast lumber annually. About one-twelfth of all our lumber. The other dealers in our city, with the exception of one, handle about the same proportion that we do, and that one handles longer timbers, heavy long timbers which we do not. I suppose his proportion would be a little greater.

Cross-Examination (Record, 1065).

In general we add fifteen per cent. or thereabouts to these wholesale prices to give us our handling charge and the profit. The date of the northern pine list which is now in effect is August 12, 1907, and the date of the fir list is the list that was filed here, January 1st. We do not go by the Tacoma Lumber Company's list. Their list is usually a dollar or more higher than other lists on the Pacific Coast. The price on two by twelve, twenty-eight dollars, laid down in Cedar Rapids, was about the prevailing price for the latter part of 1906. The early part of 1906, as I recall it, the price was a dollar less. I do not remember when the increase of a dollar took place. It was after April 18, the time of the San Francisco disaster, although I do not remember just what the date was.

1904 was the first year that they began shipping Pacific Coast box shooks into Cedar Rapids. The starch people, for some reason unknown to me, required a box made of either spruce or cottonwood, and we attempted to give them spruce boxes at that time. In 1904 the rate on spruce was the same as the rate on cedar. We did not sell them at that time. I said we attempted to. We were asked to give them a figure that would give them spruce boxes. We did not sell them. We do not use boxes. We make boxes and sell them to those who do use them, in a small way there, and occasionally job or deal in boxes when we can do so at any profit at all.

I knew that the classification on spruce rose sharply since 1905. We did not use spruce in our yard until after that change, but my recollection is it was 1904. I knew of spruce being used by the sash and door manufacturers before 1905. We would buy the sash and they were made of spruce, but I never knew of any spruce being sold to the sash and door manufacturers in Cedar Rapids from the Pacific Coast before 1905. I do not mean to say there was none sold, but I do not know.

Those were old established institutions, but they have been using other woods, and only when the other woods gradually advanced and spruce gradually came down, it was then that they got to using spruce. The use of spruce increased very largely at the time of the reduction of that rate.

In the twenty-five cars that we use annually, at first the common was small and has been gradually increasing. I do not know what the percentage of the grades has been but the common has been gradualy increasing.

I gave the price of fir on two by twelve only; twelve, fourteen and sixteen feet. We have longer lengths than that. The fir people add for eighteen and twenty feet long, I think, one dollar or one dollar and fifty cents, and we do not handle any longer than that in two by twelve. The different items of long stuff would run into two by fourteen and three by fourteen, something for special jobs in building, or heavy timber. The northern pine is quoted ordinarily up to twenty-four feet. The price of northern pine two by twelve is advanced about four dollars over the price that twelve, fourteen and sixteen feet would be. However, that is subject to variation, depending upon whether the man selling it was long or short on those items. You can get northern pine longer than twenty-four feet in two by twelve or two by fourteen from the mills. We get that up to thirty-two feet. That would add a dollar for every two feet in length above twenty-four feet. That is their rule, and for longer than thirty-two, when they get it, that is a matter of special contract. A dollar for every two feet, but the spread from twelve, fourteen and sixteen is a matter that varies with the condition of the man's stock.

I have just said it would depend on the variation from twelve, fourteen and sixteen to twenty-four, and that the advance from twenty-four to thirty-two is well established at one dollar for every two feet. The fir people cut that stuff, thirty-two feet and under for certain sizes. At Cedar Rapids two by fourteen would be in fir, thirty dollars. Now, I do not know that you could buy that absolutely for the same price in thirty-two. At times we can.

I figured the mileage from Kentwood, Louisiana, but I did not take it to Cedar Rapids. I took Omaha, because Cedar Rapids, so far as the I. C. is concerned, is on a branch line from Manchester. That would undoubtedly be the shortest route from Kentwood, Louisiana, to Omaha. I am quite sure of it. I merely looked at the map, and maybe they have followed the custom of other roads and made it look shorter

by their line. I looked at an Illinois Central folder. I took their own mileage. I think you will find that right.

I presume including the box shooks there would be in the neighborhood of five hundred and six hundred cars of Pacific Coast lumber sold in Cedar Rapids annually. I do not know that the box shooks are all Pacific Coast; but as to lumber, there would be a hundred and thirteen or a hundred and fourteen cars to the mills, and to the lumbermen about a hundred and twenty-five. I do not know what percentage of those are common and what percentage are upper grades. They are both used, but I could not separate them. I do not know how many cars of Pacific Coast shingles, including British Columbia shingles, are sold in Cedar Rapids each year. There have been two hundred and twenty-five to two hundred and fifty cars of western lumber sold in Cedar Rapids a year, for at least seven years. There has been quite a consumption for seven years, but it has largely increased recently, within two or three years. The increase was brought about by a larger use of spruce, and secondly the woods formerly used by the mills having advanced in price, and the spruce having been put in within their limit, they began to use spruce. There has been a considerable use there for seven years of western lumber.

I know people over in Des Moines and know some of the conditions, but not specifically. In general I should say that the same conditions are true there. So that for seven years there has been more or less competition of yellow pine and western lumber in our market.

The present rate on yellow pine is thirty cents. It has been twenty-eight cents. I do not know whether it was two or three years ago that the yellow pine people advanced from twenty-eight to thirty. It is thirty. It is thirty cents now from those points generally. I do not know whether it has ever been less than twenty-eight cents, but not within the last seven years. I do not know what the rate was at Des Moines. It was less. The rate at the present time I am informed is twenty-seven and a half cents.

When I stated as to Cedar Rapids that in the last three or four years there had been a very considerable increase in the use of western lumber, and that the proportion of western lumber used in Cedar Rapids, as compared with yellow pine has been greater in the last three or four years than prior to that time, I think the same condition prevails throughout the state.

Re-direct Examination (Record, 1080).

The advance in the rate on southern pine does not shut the southern pine out of Iowa. It may have given fir an additional advantage but it did not shut out the yellow pine, because Iowa has some pretty low rates, you know. Council Bluffs, Iowa, has a twenty-three cent rate. Box shooks used in Cedar Rapids come from all over the country, from the man who will make the price. At the time I figured this, it came from a box agency in Portland. That year the spruce boxes came from the coast, because on account of some peculiarity of the boxing of starch, the man required cottonwood or spruce, and the spruce boxes came from Portland. We were asked to figure on eighty carloads, and I assume that he gave the same order to the other man that he asked us to figure on. I understand that was after the reduction in the spruce rates. The other boxes were not limited as to the kind of woods, and I think a large proportion of them came from California. I think box shooks are being shipped in from the coast now. That is, they were. I do not know just what is taking place right now. These people make a contract once a year for their boxes, with the lowest man, and he furnishes them the boxes for a year.

(Wimbish Exhibit "A," Record page 1083, consisting of report on the lumber cut of the United States in 1906, issued by the Department of Agriculture, December 11, 1907, Forest Bureau, Circular No. 122, heretofore referred to in the record.)

J. H. BLOEDEL, recalled for complainant (Record, 1087):

Testified that the fire occurred in San Francisco on April 18, 1906. Questioned as to the price of lumber prior to that, along in January, February and March, 1906, he testified as follows:

I can give you that only from deduction. The deduction will be that there was a raise made January 1, 1907. That was practically one dollar. There is a price list submitted for January 1, 1907.

I think it is in the record, and that list was the highest list of any furnished during the number of years that I have been in the business. Now there was a raise made February 23, 1906, of $2; and I think that was all that there was between those dates; so that on April 18 the rail price of our lumber was $1 less than the list that is on record here, or which I can furnish if it is not already on record.

There was a very rapid and sharp demand for low grade

products that we could not sell before. There were sharp prices and sharp advances in low grade products. It was not necessarily on the list, but unsalable stock that we had had on hand for some years and could not sell, was sold rapidly at good prices. At higher prices than it had been sold for before. That was the great advantage of the fire. There was a demand for any kind of covering and they took whatever you had. Not necessarily at whatever prices we asked, but of course, we got the best we could and they got it as cheaply as they could. There was a demand for rapid supply. I may say that transportation cut considerable figure in that. That is, water transportation, which had been $4 per thousand feet from Puget Sound to San Francisco advanced sharply to six, to eight, and finally as high as ten dollars per thousand feet, because it was in such demand that it could not be supplied.

I do not think the railroads increased their rates. There was only one increase in the railroad rates and that was on the Southern Pacific, from $3.10 to $5. I do not know just when it was.

The vessels that carried this lumber are owned by a number of individuals. They are owned by shippers and concerns and individuals. There are hundreds of owners in San Francisco. They are not generally owned by the lumber men, or lumber associations, although some classes of lumber schooners are owned by the coast or cargo lumber mills; not generally, however. There are sailing vessels which are owned by individuals, and the cheapest transportation generally is by sailing vessels.

I cannot give you the exact figures but I think there was an advance in the price of logs from Puget Sound from January 1, 1906, to January 1, 1907, on an average of about $3 a thousand. There was more advance on high grade logs than there was on low grade logs, but I think an average advance of $3 or $3.50 will cover it. I think it was not $4.50 on low class logs. I think low class logs were worth about $6, and I think they advanced to $8.50 or $9, the highest class logs advanced about $4 or something like that, but the average was $3, or possible $3.50. I have not given exact figures, and could not give them, without refreshing my memory, but there was about that advance. My notion is that it was somewhere between $3 and $3.50 on the average. As I said, there are different grades of logs, and prices advanced differently on different grades. I am not as familiar with water rates as others, because we, ourselves, are not water shippers, and I am only familiar with them by general information.

(The complainant here rested.)

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Volume IV.

(TESTIMONY.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 451.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 30, 1910.

IN THE

Circuit Court of the United States.

FOR THE DISTRICT OF MINNESOTA,

THIRD DIVISION.

UNION PACIFIC RAILROAD CO., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., and Oregon and California Railroad Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 883.

NORTHERN PACIFIC RAILWAY CO., Great Northern Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., and Oregon Railroad and Navigation Company, Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 884.

GREAT NORTHERN RAILWAY CO., Northern Pacific Railway Co., Chicago, Burlington and Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., Oregon Railroad and Navigation Co., and Southern Pacific Co., Complainants,

v.

THE INTERSTATE COMMERCE COMMISSION, Defendant.

In Equity. No. 885.

HON. FREDERICK N. DICKSON, Master.

TRANSCRIPT OF RECORD.

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TESTIMONY ON BEHALF OF THE DEFENDANTS.

JAMES J. HILL (Record, 1100), testified as follows:

I am a director and chairman of the board of directors of the Great Northern Railway Company. I have been connected with that company since its organization. I am familiar with the circumstances under which the so-called 40 cent rate from Puget Sound points to St. Paul was established. At the time the Great Northern Railway was finished to Puget Sound there was little or no lumber going east. The cars going out to the coast under load had to be hauled back empty, practically all the way, and there was nothing else except lumber, or occasionally a few boxes of salmon, the salmon amounting to very little, to make a return load. I called the lumbermen about Seattle, and a few up at the mouth of the Snohomish river. I called them together; Judge Burke of Seattle was with me. I think it was in 1892—in the summer of 1892. The railroad was finished in January, 1893. The rate was made 40 cents on fir and 50 cents on cedar. At that time lumber was very low. We bought fir lumber for five and five and a half and six dollars a thousand. We then saw that clear lumber; sway bracing; caps and stringers for trestles, without a knot, selling for $5, $5.50 and $6 a thousand; and it seemed to me that that lumber should go east, and many, or several of the mill men thought it was out of question. We made a rate of 40 cents and told them at that time that if the business grew to an extent that empty cars had to be hauled to the coast they would have to pay a higher rate, and they could afford to pay a higher rate when the business had grown to such dimensions as to require empty cars to be hauled from the east.

After the financial depression in 1893 business was very dull on the coast. Cedar shingles were manufactured and sold very low. I got some of my banking friends in New York to advance money on cedar shingle shipments, that is, on the rail bills of lading. Some of them in Seattle, for a year or two,

said that cedar shingles were their legal tender. They brought money when nothing else would bring money out there.

As late as 1897, where we were taking 40 or 50 cars a day under load to the coast, we were bringing back 15 or 20 cars in lumber. In 1893, when we went through from the mountains, standing timber was very cheap. Some distance back from the road it was as cheap as 12½ or 15 cents a thousand. Nearer the railroad, at what lumbermen called good chances, lumber could be had at 25 cents. The advance commenced almost entirely after 1897. That is, the increase in the amount of eastern shipments. I am not a lumber expert, but in my own mind I always thought that the lumber from the coast came further east, as stumpage on white pine in the east advanced. When white pine was down to $2.50, $3, $4 or $5, there was very little of the western lumber came in. As it got up to $12 and $14 the amount increased.

I am speaking of the timber prices. We tried to increase the empty cars on the coast by developing the export business, and we met with considerable success; but at the present time there is not much of that. During the time of the year when lumber is shipped from the east the main tonnage is raw cotton, and that goes in the winter months, and there is very little lumber shipped east. I think that the lumber dull season is between the middle of December and, say, the 20th of February or 1st of March.

The additional cost of handling the property not only justifies but demands the change. The additional cost is more than the proposed change. Commencing in 1893 the amount of this business moved by the railroads was very little. As late as 1897 I think that on the Great Northern fifteen or twenty cars a day went east. This year at times as high as 175 or 200 cars a day have gone east. At times on the Cascade range, where there is a tunnel nearly three miles long, it is very easy to reach the capacity of the Great Northern Railroad, especially if the wind is blowing from the east. On such occasions it takes that tunnel two or three hours to clear after a train goes through, owing to the length of it. When the cold days come it clears out sooner. We have handled over 200 cars in a day. The superintendent said 125 cars a day was the capacity. I did not believe that was so. We are now building an electric plant, installing electric power and engines, and will use electricity in the tunnel, to avoid

that question. We can then handle 300 cars loaded in each direction. That would be six hundred cars a day altogether.

From my knowledge of the market conditions and transportation facilities, I do not think that the question of ten cents a hundred would make any material difference in the quantity of lumber used. It might for six months; it possibly might for twelve months. The necessity for advancing the rate is the increase in the cost. The increase in the cost in the last eighteen months or two years has been from thirty to forty per cent., and the heaviest increase has been in the last six or eight months. That consists of the increase in the cost of supplies of every kind. That part which is wages and that part which is supplies would vary on different divisions according as the work was being done. I have no general impression as to what part of that would be an increase in wages and what part would be an increase in supplies. There is a very great increase in the cost of supplies. I have not noticed the probability now from the present outlook of an increase in the cost of supplies from now on. A very large part of our supplies is lumber. We use a great deal of lumber in the construction and maintenance of the road. We buy lumber on the coast to-day possibly cheaper than a year ago or possibly cheaper than six months ago.

Referring to the question whether the cost of steel and iron and engines and material which enters into our work will continue as high, you may have noticed that a meeting was held in New York as to the cost of steel, when it was decided to maintain the price. This was pretty wide. It covered a great number of people. They gave their reason that they did not want to offer for sale their steel and destroy and use up for nothing their resources of ore; that was the reason given. There was very little decline in prices of railroad supplies of various kinds in 1903 and 1904.

The steel makers of the country have met within a short time and announced that prices would remain the same. Under those circumstances I do not think there is much room for my opinion about their power to maintain these prices. I think the steel makers of this country now entirely control the available iron ore of the country. I think they do. I think on the other hand the timber is very much in the same position. The steel makers seem to control the ore and the lumber makers seem to control the stumpage. So that if we people

who have to buy will be obliged to pay about what they see fit to charge, we who carry might be allowed what was left after the others get through.

Now, as to the question of wages all the organized branches of labor have been very materially advanced. We are hardly under contract with reference to those. They have been advanced and schedules established aside from the question of contract. The care of life and property means something, and good men, if their wages were reduced, it is a very open question whether they can buy their bread or their coal or lumber to shelter them, or their children, for any less. We might put them in the position the railroad is in by pressing them from the top and pressing them from the bottom, and they would be between the upper and nether mill stones. I cannot say in our arrangements with these labor organizations, whether we have any definite understanding as to the length of time that the arrangement shall cover. They usually come about a certain time of year, or did, but recently, I think, there has not been as much attention paid to that. I think they come much more frequently. They have a schedule of wages on the railroad with different classes. I do not think we agree that that schedule shall remain in force a certain length of time. There has been a custom that if there was anything to be brought up they would bring it up about mid-summer. I think that is the way, but I am not the officer who makes the schedules and I am not as familiar with them as some others. Locomotive engineers, for instance, we pay five dollars a day, and that is not for a day of ten hours, but it is for a hundred mile run.

There are various reasons adding to the cost. Last winter there was a very deep snow and very cold weather which has increased the cost enormously. This year there has been no blockade of business, business has been moved with less trouble, with less delay, than in any year that I recall in the last ten or twelve years, and still the cost is higher.

Cross-Examination.

I did not make the rate on any railroad. As far as my influence goes, I would take my share of responsibility. I did not suggest this advance. An advance had been suggested and more or less urged for several years, for two or three or four years, I do not recall how many. I could not tell you who took the first step toward putting this advance into ef-

fect. I don't know. I do not know whether the Northern Pacific did or the Great Northern did, or whether the Harriman Lines did. I cannot say when I first knew the advance would be made effective. I heard it sometime about when the notice was being discussed. There was no such conference between me, or other officials of our line, that I know of, and the officials of the other lines on that subject; and I have never attended any conference with any of the other lines on any subject of rates in my life. I do not know how it happened that the advance was made to take effect as to each of these lines between the same points at precisely the same moment, and on the same day, and how it happened that it was published by a joint agency known as the Trans-Continental Freight Bureau of Chicago. I do not know what the Trans-Continental Freight Bureau is. I have never attended a meeting of that Bureau, but I assume that it is some association of traffic officers. I do not know what the other traffic associations in other parts of the country are like. I did not know there was a Southeastern Freight Association. I do not know how it happened that this rate was put into effect on all these roads on the same day, and between the same points, but I could not imagine how it could be put into effect at different times. All rates have to be published, and I suppose that all interstate rates would go into effect at the same time. Now that is only a suggestion; I haven't any knowledge on the subject. I know nothing about the making of this advance or why the rate went into effect on the same day between the same points. You will have to get the information as to what the Trans-Continental Freight Bureau is from somebody else. I don't know.

The Great Northern and the Northern Pacific are jointly building the Portland & Seattle Railroad. Pasco is not on our line. The Portland & Seattle extends from Spokane to Portland down the Columbia river and is a water-level road or nearly so all the way. We expect to make connections at Spokane with this new line. The Portland & Seattle makes connection at Spokane with the Great Northern, and then runs from there to Portland, Oregon. That green line (indicating on the map) is the Great Northern, and it comes down through here. That is the projected line along the Columbia river. (Indicating on map.) When it is finished we will run into Portland. We run directly west from Spokane with our line to Seattle. We have no line from Portland to Seattle. The Northern Pacific has a line from Seattle to Portland. The

Portland & Seattle runs to Portland and strikes all roads that are in there. There is room for only one road on the north bank of the Columbia river. I suppose that if one should build it the law would give the other road the right to use it. We built the Portland & Seattle because we wanted it. After building all this distance (indicating on map) we wanted to go down the Columbia river, and we wanted a connection with Portland. At present, our connection with Portland is made over a competing rival line, over the O. R. & N. and has been for years. The Northern Pacific has a line into Portland via Tacoma over the mountains, and a much longer line. I think the result of the building of this road will be to much relieve the congestion. I hope it will. I don't know that it will have the effect of relieving the pressure on the Cascades.

To do that you would have to shut up some local mills up there. I don't know how far it would do that. It may develop a lumber business where stumpage is cheaper, but we will have an additional line to the Coast on practically a water-level and on which we will not have to cross the mountains or tunnel. We will have the use of that as well as the Northern Pacific. We own it jointly. We will have a connection over it. I suppose the Great Northern will have a connection over that, over lower grades and more favorable conditions than this present connection by way of the O. R. & N. I do not know whether the wages of our section men on the Great Northern at the Pacific Coast have been reduced. I do not know whether the Northern Pacific has reduced theirs. We will, if we can.

The Great Northern and the Northern Pacific acquired ownership of the Chicago, Burlington and Quincy to get access to the country served by that road. At that time there were a great many roads being consolidated, a great many roads were being bought up. The Burlington was not building towards the Pacific Coast. It had stopped at Billings for many years, was not building beyond there.

I only have the assurance of the President of the Company that they had surveyed a line some years before, up to Great Falls on the Great Northern. They thought it would not pay to build there, and did not extend it. The Burlington rails reach the Great Northern rails at St. Paul. We are building across to the Burlington in Yellowstone Valley now. I could not tell you whether the same interest which controls the Great Northern also controls the Northern Pacific. That is a matter that would have to be determined by the stock

list. I see in the newspapers that they are both known as Morgan-Hill lines, but I am too old to believe everything I see in the newspapers. I never saw the work entitled "Johnston's Railway Transportation." I never knew of a syndicate called the Morgan-Hill syndicate. I have seen something in the papers about Morgan-Hill lines, and that name used, and so on. I have wondered why it was so, very often. I have also seen reference to the Harriman lines.

Take the Great Northern road. There are over ten thousand shareholders in that road, and I think it would be safe to say that one quarter of them are women. The stockholders control the Great Northern Railroad. Its Board of Directors directs the management of the road. Every year I have asked for proxies and they have sent them and have selected a Board of Directors that would run the business of the company under its charters. There has been very little change in the Board of Directors. They have gone on. I am not a member of the Board of the Northern Pacific Railroad. I only know in a general way how that Board is elected as I know of the Northwestern or the St. Paul or any other road. I do not have any influence in selecting the Board of Directors of the Northern Pacific Railroad. One of my sons is Vice President of the Northern Pacific Railroad. In giving the history of making this 40 cent rate in 1893, I stated that lumber then was very cheap. In saying that in 1893 we were in the midst of a depression greater than now, it depends on the time of the year. It came very suddenly in mid-summer. In 1892, when we were building, we bought lumber out there for five dollars a thousand, and there was no depression. We were not building out to furnish a market for the lumber. We were extending our railroad, and so far as the lumber interest was concerned, it was a question of loading back cars. There was very little lumber along the railroad.

There was not any settlement on the line of the railroad, and there was not any lumber on the line of the railroad until we got down within a very few miles of the Coast. Most of the lumber was bought on the Coast. Standing timber was very much cheaper then than now. I do not recall an address you say I made before the City of Seattle Council on Thursday, February 18, 1892. I do not know whether it was reported in the Post-Intelligencer of Seattle on Friday, the nineteenth.

(The following was then read to the witness, record page 1126):

"In lumber alone you have more tonnage standing on the

ground than Minnesota would produce in 50 years if every acre of her soil was cultivated, and each acre gave an average yield. Your lumber will pay as good a rate as grain going east. There has been some doubt expressed as to our ability to carry lumber at 40 cents per hundred pounds. I assure you that it is not a very low rate; but it is as low as we want to begin on. We think at that rate you can have a heavy business," and he was asked whether he recalled that language.)

(Continuing) the witness testified that he did not. Excuse me a moment. Now, that report bears on its face an absolute absurdity, because the timber standing in Washington, cutting that in 50 years, would be more than the tonnage of Minnesota acreage in 150 years, and it is a very simple calculation.

I do not recall reading a report in the Post-Intelligencer of a speech you say was made by me under the date of February 17, 1892. I have been at the Ranier Hotel. I do not recall whether it was on any occasion that was special to me. I know this, that my entertainment at Seattle is still due. They have postponed it from time to time, and the last time they wanted to have it when the new passenger station was finished, they wanted to celebrate the building of our new railroad to the Coast, but when I am out there I am usually pretty busy, and I begged off. I do not recall whether I was entertained on the occasion you refer to.

(The attention of the witness was then called to the following language:

"A very large portion of land between the Cascades and the Sound is covered with as fine timber as grows in the world. The actual tonnage on an acre is more than you can raise on an acre of fertile ground in wheat at 30 bushels to the acre in 100 years. Every ton of this timber will pay as high a rate of transportation as wheat. It is not subject to destruction. All you have to do is to find a market. There is where I thought our company could help you in some material way. Timber is your most valuable product. In the east there are forty or fifty million of people who need your lumber, and who have a disposition to buy and the ability to pay for it. A year or more ago, in conversation with Judge Burke, in his modest and quiet way, he seemed anxious to know what rate we could make. I told him I thought we ought to open it at 40 cents. He seemed anxious to know how, he thought I had made a mistake. This rate will not cause us to suffer

for your sympathy. If we can carry your products east we can bring your freight west," and he was asked whether that was a correct report of what he said.)

(Continuing) the witness answered: I don't remember what I said on that occasion, but these reports are largely random. Every man who sees himself reported knows that they are full of inaccuracies. As far as the rate on wheat is concerned, the lumber rate is lower than the rate on wheat, it has been, and he says if we could carry this stuff east we would bring it west. Is that not the way you read it? That would be exactly reversed to make it intelligent.

It is not my custom to revise interviews that I give to newspapers. I see a great many interviews that I have not given, where I have never seen the interviewer. That is quite common.

(The witness was then asked if he gave the following interview to the Post-Intelligencer at Seattle as published in its Issue of October 7, 1892:

"We propose to develop the lumber business of this region. We not only intend to extend the present market, but to find new markets for it. Why, if you were to ship one million feet of lumber a day, that would only be five per cent. of the lumber cut west of Michigan. I think a 40 cent rate will help the lumber business considerably, and we shall make a 45 cent rate to Chicago. That gives us 37-1/2 cents as our proportion of the haul. Just let me show you what we can do in this matter. Say we have a road 1,800 miles long. The average cost per train mile in Iowa is $1.00. East of there it is a few cents less. But say it is $1.33 in this mountain region. That would make the cost of a train over the whole line $2,400. At 40 cents a hundred, we would only have to haul 300 tons, or a train of 15 cars; to meet this cost. At 30 cents per hundred it would be 20 cars. But we propose to haul trains of 35 cars. Of course we shall have to have helpers over the mountain here. If you will take the trouble to observe the trains of these other roads you will notice that they average less than 15 cars. They cannot haul as large a train as ours, and hence we can make money at rates that they cannot live on." (Continuing the witness testified):

I do not recall it. The question of the rate, the cost per train mile at that time—I question if expenses were ever lower than $1.00 per train mile. Our present rate—the cost—is about $2.00 a train mile. It has advanced very materially since that time.

It is stated in that quotation as $1.33. On some divisions it will run up to $2.25. According to the conditions now the cost is very, very much greater. It is greatly enhanced.

I am not lately familiar with the physical condition of the Canadian Pacific Railway. On the Canadian Pacific the rates are higher than on the Great Northern, although they are reducing them and spending a great deal of money to do it.

The cost of operating a train would depend on local conditions to a very great extent and would depend on how that cost is made up. The American method of accounting is based largely on the requirements of the Interstate Commerce Commission. I do not think the Canadian accounts are supervised in any manner as closely as the American accounts, and unless you knew how those accounts were made up it would be difficult to compare the cost. I would say that the cost under normal conditions on the Canadian Pacific would be less than on the Great Northern. Their labor is always lower than ours, until probably this year. The government has been building a road in Canada, for the Grand Trunk, and that has affected labor to some extent. Usually their labor is considerably under our labor.

I do not know that we ever carried a carload of lumber from the Canadian side in the Pacific northwest over the line of the Great Northern, through the United States and back up into the country around Winnipeg. I do not know that there has been one car, I never knew of one.

I never put in a rate. I do not know that the Great Northern Railroad put in that rate. I do not know whether there is a rate into Winnipeg from the Coast. If it had such a rate and lumber was carried, I do not know that it would be remunerative. I do not know whether the Canadian Pacific brings lumber over onto the American side and comes into competition with the Great Northern in Minnesota and Illinois, or whether their rate is 50 cents a hundred and sometimes less. I do not know the rates of the Canadian Pacific, and I do not know where they would get lumber that they would bring into Minnesota. I think the rate from the Pacific Coast east on Lumber a very low rate, the lowest rate that I am familiar with. I do not know any such railroad as the Gulf & Ship Island Railroad. There are a great many things about railroads that I do not carry in my mind.

The rate of 2.66 mills on the Illinois Central might be a very compensatory rate; it might be better than hauling cars back empty. If they were taking corn in large quantities to

New Orleans, or business of that kind, and had the choice of hauling cars back empty or getting something for them, it might be a compensatory rate. I do not recall the per cent. of empty cars hauled on the whole Great Northern System for the year 1906. You can get them from the reports to the Interstate Commerce Commission.

(Counsel then stated the figures to be 28.2 per cent.)

(Continuing the witness testified:) I do not know the average empty car haul of the Rock Island System or the Seaboard Air Line, but just let me say this: The average on the Great Northern would not bear much relation to the average on some portions. Take the average from east of the main range of the Rocky Mountains to the Coast. At times there are more empty cars; in the last summer there were more empty cars than there were loads. I think they could give you the empty car haul from that point to the Coast, which would be material. That point I indicated on the map is Pacific Junction. We can give you the empty car haul from Pacific Junction East for one year. The company's report will give it for the whole system, I think.

I would not undertake to explain the difference between our empty car haul in 1906 at 28.2 per cent. and that of the Rock Island System at 31 per cent. I do not know anything about the per cent. on the Seaboard Air Line. The Pennsylvania Railroad handles a very large amount of coal. Coal cars and ore cars are carried in only one direction loaded. Low grade traffic, coal and lumber, is a profitable traffic if it is in large amounts. In some places it is very profitable because they get a full tonnage. We do not get a full carload tonnage on lumber from Washington, all we can haul.

An 80,000 or an 85,000 pound car we cannot get anything approaching the full capacity. I think they are allowed 15 or 20 per cent., I think the minimums are based on 15 or 20 per cent. less than the capacity. I do not know anything about the Chesapeake & Ohio. I have not time to look up questions relating to the rate per ton per mile on that road, and I know nothing about it. I do not know the rates.

In making rates the first consideration is the cost of service. We have to take the cost of the service on the rate. Making a rate on bricks, for instance, would not be affected—it would not do to base the rate on brick on what it would cost to haul a carriage on a flat car. Both might be loaded on flat cars, but they are of vastly different value for a hundred pounds.

The cost of moving a car long distances two years ago I think would be in the neghborhood of six cents a mile. In speaking of the whole cost of the traffic, everything that should be charged as a part of the cost of the serivce, you are getting into a question that nobody has been able to determine that I know of. You can get at the cost of a particular service approximately. You can get at the cost approximately, but you cannot say how much the wear and tear of equipment, how much the washing of embankments or the decay of ties is to be charged to any particular train; you could not do that. Then again, there are branches of the service, there is the superintendence, there is the track laborer, how much of that is to be charged to that train or to freight, and how much is to be charged to passenger. There is practically no difference between the cost of transportation of five cars of high grade freight, and five cars of lumber, if they are of the same weight. The carriage risk of the high grade freight is greater. In addition to that there is a difference in the use that is made of cars. The terminal service enters into the cost. If you have to put a car on the side track and it remains there ten days and you have to go down every day to find out whether it is loaded or not, it costs you something. That is a terminal cost but it is a part of the cost of the whole thing.

In some places it is true that lumber is loaded at the mill and on spur tracks, and side tracks, so that lumber cars do not require the use of our expensive terminals. Now this year, we find from experience of other years, that if we would let our cars go off our road with lumber going east, we would not get them back, and we could not move our own grain crop when the time to move it came—our cars being away. Now, we unloaded the lumber going beyond, between cities, Minnesota transfer, unloaded it and kept it until we could get a foreign car. We kept our cars in our own service, and as a consequence we moved freight with less delay than I have ever known it to be moved.

The average cost of transferring a car of lumber depends on the kind of lumber. If it is dressed lumber it would cost more. I should says $3.00 a car. In considering whether as rates are applicable on our line, through lumber pays more than local, it would be more in the aggregate, that is, the shorter haul could not be greater than the longer haul. But, as to paying, under the lumber rate, for the last six or eight months, we would rather not have had it at all. Sometimes on the short haul you allow more than a day for loading the cars. There is no special rule.

I cannot remember what took place before the Railroad Commission of Minnesota during the twenty odd years I have been before the Commission, but I would like to answer that question so as to make it plain, because I do not want to be put in a wrong position, or allow that to go into the record without explaining it. I could not remember what conversations took place or what statements may have been made before the Minnesota Commission. I have not seen any stenographer's report. I am not prepared to say that I did not say before the Minnesota Railroad Commission that we got our revenue on our long haul and that I did not state as one of my reasons that on the long haul there is the same time at the terminal as on the short, and the same free time for unloading at destination, but that the short haul car is producing revenue for us for only one day and the long haul car for many days.

There are places where they claim, three and four and five days to unload. You go to Chicago—I don't know if the car goes to Chicago—and it is going east or sometimes shipped for reconsignment. I think they ask for seven days; I think so. So those supposititious cases do not apply.

We have a rule on our road in some places allowing certain free time for unloading and charging demurrage after that. Such rules exist at hundreds of local stations; you have got to follow the thing up. Suppose a carload of lumber went to a local station, and the man was notified that the car was there, and he lives two or three miles away, or perhaps five miles away. What have you got to do? You have to wait until he can get there and unload it, or else unload it on the ground. In cases of that kind we do not charge demurrage. It is the same thing if a man orders a car; a man wants a car to load grain. Sometimes we could not furnish him a car for a day or two, and he may have to haul his grain three or four miles. The roads may be bad, and he may only get half a load in.

Four hundred or five hundred miles in North Dakota on grain is not a particularly short haul on the railroad. It is short compared with 1800 miles and the rate is different also. The rate per ton per mile is higher. The rate per ton per mile is much higher, notwithstanding the shorter— There is a rule among the railroads for the per diem charge. It is not made by an association. I think it is 50 cents. It was 20 cents. If we permit a consignee at one of our local stations to hold a car four or five days, and that happens to be a

foreign car, we would have to pay 50 cents a day on that. In addition to the cost of service there is a question always underlying all the rates, and that is the ability to find a market. If the railroad is built into a section of the country, it has got to carry what that country produces or go without it. Now, the question is if it can carry what that country produces and get a profit out of it, and enable the producer to make a profit, both are on a sound basis. You cannot tell to an exact point whether you get a profit out of the movement of a particular commodity or not, but you can get it approximately.

Those are the main items in rate making. I never made a tariff in my life. You have to consider the length of the haul. I should think that would be elementary. Up to a certain point you consider the tonnage. Up to a certain rate, up to a certain point, the general rule is that the greater the tonnage the lower the rate, but when the traffic increases beyond a certain point, then it adds to the expense and it costs you more when you overload the machine, for carrying it. The risk involved must always be counted. That is known as the carriers' risk. It is greater in some articles than in others. I never made a tariff in my life.

The reason why I think this is an abnormally low rate is because it brings us less than its costs to furnish the service. I can show that to the Commission now. The average distance between cities is about 2,000 miles, to the Coast, just about 2,000 miles. But, during the past summer I had occasion to look it up closely. I found we moved more empty cars over the main range and over the Cascade Range, west of the point involved in this question than we did loads. Now, to take a car out and back, every car that goes to one end must come back, they have to come back. It costs from seven to nine cents a mile on distances of 400 to 500 miles, and more, to haul freight cars. If the entire travel is 2,000 miles out and 2,000 miles back; then that car travels 4,000 miles, and at 7 cents a car mile it would be $280. It would cost that without any return for the use of the property, without any taxes—simply the money that is paid out to move that car. Put 50,000 pounds of lumber into that car at 40 cents a hundred, and you get $200. You have paid out $80 more for every car you have moved out at the minimum. Now, at some time in the year—take it in the winter months—the train load is lighter, it must be reduced on account of the extreme cold weather, and the cost is higher. But I would

say that about 7½ cents—from 7 to 7½ cents—and on many roads it is greater than that.

I do not say that we have to haul all the cars west that come east loaded with lumber empty. No, I said that we haul about one-half, and sometimes more than one-half of our westbound cars empty. That is to bring lumber back. The officers of the road could give you the figures showing how many carloads of lumber we hauled during the year 1906. I could not give them. We do have an empty car movement for grain and other products on our railroad but not to the same extent. You take the case of North Dakota and in Northern Minnesota, that grain largely goes down, during the season of open water to Lake Superior, and a large amount of coal goes back. What I wish the Commission to understand is that when we do carry an empty car over there and bring it back, haul it both ways, that we lose from $80 to $100. Under those circumstances I mean to say that we are transporting lumber for less than the cost. Those circumstances very frequently occur. They have ocurred every month in the last year, and as high as 60 and 70 and 80 cars a day.

The relations between the Great Northern Railway Company and the Northern Pacific Railway Company have not been particularly close for a number of years. No closer than with other roads. Some years ago they were practically the same, the control of both roads was practically the same, but they change and get farther apart every day, you might say. I would fix the time when they were practically together when the Northern Securities was dissolved. There was an actual change in stock ownership at that time. The Northern Securities stock was replaced by shares of the other two companies. It left me and my friends in control of each of those roads. I am a stockholder in the Northern Pacific at this time, a considerable amount. My son is vice-president of the Northern Pacific at this time. Recently my son-in-law has taken an office on that road.

I may have heard of the Trans-continental Freight Bureau before today, but I did not know what it was. I do not know what it is. I haven't anything to do with the filing of tariffs. As chairman of the Board of Directors of the Great Northern I sometimes am asked as to a question of general policy—when I was president of the company; as to questions of general policy, but I never made a tariff in my life. Upon the general policy of advancing rates upon the Great Northern and Northern Pacific, I was not consulted by the officials

of each of those roads. I never attended a meeting between the officials of those roads in regard to rates in my life. I have known of meetings of all the roads in the Northwest—St. Paul and the Northwest. All of them get together and discuss questions. I did not have any conference with any of the officials or any of the stockholders of the Union Pacific, the Oregon Short Line or the O. R. & N. with reference to the promulgation of this new tariff. I do not know that I have spoken to a stockholder of the Union Pacific. I think once within a year or year and a half I met Mr. Harriman on the street and shook hands with him. That was some time during the summer, but as to any conference, or as to any discussion of these rates I have had nothing to do with them. The first I knew that the Union Pacific and the Harriman lines generally were to advance the rates the same as the Northern Pacific and the Great Northern upon lumber, was when I saw it published. I think that was the first information I had about it. I know that the question has been discussed for, I might say, several years.

I was not present at any discussion when the matter of the raising of the rates by the Harriman Lines was considered. I have never attended a freight meeting of that description, that I recall, in my life. I saw accounts in the newspapers of troubles, and quite a clash between the Harriman and the Hill interests in Washington and Oregon about eight or nine months ago. There was some effort to prevent the building of a line on the north shore of the Columbia River. There was a local road there that claimed to have the right of way and I think that was generally considered as owned and controlled by the Harriman interests. It is a matter of record in the courts as to just what they did do. Whether it was seeking to retain the right of way for their own use or to prevent our building down there is a question of opinion. I may have my opinion. I do not recall any special trouble in Portland except as to the way of getting into certain yards, or property. There may have been trouble about terminal facilities. That I am not familiar with. I am not sufficiently familiar with that to testify. I think that began with the construction of that road, which was two years ago. There is absolutely not one scintilla of truth directly or indirectly in the theory that there was a harmonious arrangement made between the Hill and the Harriman interests, whereby the Harriman interests withdrew opposition to the Hill interests, building the road down the north bank of the Columbia River to

Portland, whereby it is said that I permitted Mr. Harriman's road to build to Seattle, and as a part of that arrangement it is said that this advance in rates was agreed upon, or that that was a part of the consideration, or that it was coincident with that.

We were never blocking the Harriman interests building to Seattle. I can say, speaking of the Great Northern, that they were never blocking those interests, not for a moment. I do not own and am not interested in any companies which own timber in Idaho, not a stick. I am not interested in the Weyerhaeuser Timber Company's holdings. I am interested in the O'Brien Lumber Company on Kalispell Lake in Montana. I think the rates are advanced from that point eastward on lumber, but that is not a lumber mill in that sense. That is a tie plant that the company owns. Mr. O'Brien ran it for a while and then he wanted to cut lumber and we wanted the ties. So we bought his interest out and put the plant to cutting ties. That company has complained to the Great Northern of car shortage. I could not say whether its complaints were heeded. The traffic men will answer that question. That is the company's plant for supplying itself with ties, and that is all it amounts to, and all the timber it owns or anything connected with it. We could make ties cheaper than we could buy them.

At the time the Great Northern was built through to the Coast there was very little lumber moving eastward. I do not think the rate was so high that lumber did not move eastward. There was very little increase in the movement of lumber east until the stumpage in the white pine districts of Minnesota, Wisconsin and Michigan very largely advanced. When I first went out there, I paid 90 cents a hundred for a carload of cedar from Westminster, at the mouth of the Fraser River, to Winnipeg. Before we put our road in, the rate had been reduced. Possibly the building of our road had something to do with it. It had been reduced to 55 or 60 cents, something in that neighborhood. Shingles had not begun to move before that time. I do not recall a shingle mill north of Snohomish, which is 30 miles north of Seattle, at that time. Snohomish is the County seat, and shingles were produced there shortly afterwards in large quantities. I should say in 1894 or 1895 they commenced to move east in considerable numbers. I wish to state that for two or three years after the 40 cent rate was put in there was very little lumber movement eastward upon that rate.

I recall an occasion when Mr. Russell Harding was our superintendent. I think it was in 1897. The expense of operation on the lines west of the Rocky Mountains was very high. I was discussing the question with him, and he said, "Mr. Hill if I could have one train a day east from the Coast to load our empties, I could make a good deal better showing. If I could have two trains or three trains that would load all our empties; it would make a much better showing."

I have no knowledge whether or not the Northern Pacific at that time had a considerable empty car movement eastward. In 1893 I think the Northern Pacific failed, went into the hands of a receiver. I say the wage rate has gone up in the last year very considerably. In the last year all wages of engine-men and train-men have been advanced, and of common labor very largely. Common labor, up to $2.00 and $2.50 a day from $1.50, very hard to get and very indifferent labor at that. We do not employ large numbers of Japs about our railroads. We employ Italians and give them $2.00 and as high as $2.50 a day. I think that within the past year there have been substantial increases. I think it was about a year since the locomotive engineers were advanced to $5.00 a day —not $5.00 a day in hours. It is $5.00 per 100 hundred miles, and when they run a passenger train 200 miles, which they usually do, they get paid for two days. Wages have not been reduced recently on various roads on these different classes. There is no construction carried on at this time of the year. There are no extra gangs. The wages of those engaged in operating the road as distinguished from construction have been advanced during the past year. The section men have had the same rate of wages that other labor has had. The wages of the train crews are not the same as they were a year ago or two years ago. They have been materially advanced. The Commission was called in to settle some of those cases. There were advances to clerks and everything.

The cost of living has materially advanced and wages have also. I do not know whether 25 per cent. of the operatives upon the Northern Pacific at Missoula have been laid off within the last three weeks. I am not familiar with conditions on the Northern Pacific. It is not my opinion that if these advanced rates are maintained, quite a number of the saw-mills in western Washington may be forced into bankruptcy. I think directly the opposite. I have not expressed myself recently that in my opinion quite a number will be forced into bankruptcy. I did not so state at the Willard Hotel a few

days ago. Some gentlemen spoke to me about the question of rates, and about these rates, and I told them that they would have to stand these rates because the property could not be moved at the old rates. We have no way except approximately to determine the actual cost of moving a carload of lumber. I have no definite figures upon it. No man can make an intelligent study of the cost of moving a car of lumber as against a car of coal or a car of brick or a car of grain. If the same weight is in the car of each, it would take a very much sharper pencil than I ever saw to figure out such a difference in the cost.

In figuring the minimum car revenue on lumber it depends on the length of the haul, the distance to market. I do not think in my testimony this morning I made any arbitrary minimum or any minimum. I said an average of 50,000 pounds. I think the average would be less than that. If it appears from the testimony already taken that the average is 57,000 pounds, I think I know better than the man who testified to that. The railroad company has the weight of every car it loads, and it is a very simple matter. For instance, some shippers will load their cars twenty, and in some cases, twenty-five per cent. heavier than others. It is very easy to get at the actual weight of all these cars the last year or two. We do not charge the lumber movement with a hypothetical empty haul movement for every car used in the transportation of lumber eastward.

In making my estimate showing eighty dollars loss upon every car of lumber moved, I did not estimate that the car went from Minneapolis to the coast empty. I said that the eighty dollars or one hundred dollars, or in some cases one hundred and twenty dollars would be the loss on the car that was moved empty in one direction. I paid a good deal of attention to that at times this summer, and sometimes I would find as many empties going west as loads, and some days more empties than loads. The percentage of empty car haul upon the Great Northern is in the neighborhood of 28 or 30 per cent. Coal cars are loaded back, this year particularly, into the grain fields, so that there were practically no empties of coal cars.

Any car that moves west empty and comes back with a load of lumber, is carried at a loss.

I may have heard of the Portland gateway case. I do not recall it. Last June I was either President or Chairman of the Great Northern. I don't know how the Great Northern

could get down to Portland. They haven't a railroad within 180 miles of it. There it no way the Great Northern could carry any freight to Portland unless they hired somebody else to do it. I do not know anything about the position that the Great Northern took themselves in that case. I did not know the Great Northern had any such case or was interested in any such case. The empty movement west causes the increased cost of this traffic. I will explain that. If the west-bound traffic made more empties on the west end than the lumber would load, all the roads would be glad to carry at 40 cents rather than bring the car back with nothing. The increased cost of the traffic is the cause of this advance, and the empty car movement is a part of the increased cost. The increased cost is the cause of this advance and the other is an element of that increased cost.

The rate has been raised on fir to 50 cents to St. Paul from Seattle and western Washington points from 40 cents.

(The attention of the witness was then called to an extract from a letter written by Mr. J. M. Hannaford, of the Northern Pacific, discussing the reasons for this increased cost and referring to the empty car movement, in which it was stated substantially as follows: "We believe with the proposed advance that we can handle empties west at least up to our ability to handle loads east-bound on our line.")

Continuing, the witness testified: We can haul more empties west than we could at 40. If the lumber movement should grow as it has, proportionately, it would be very difficult to supply the lumber traffic on that basis, as the Northern Pacific say they can. As it is to-day the lumber traffic is very quiet at this time of the year. We should try to furnish empty cars on the coast, and in fact this year we have tried to— A 50 cent rate would go very far toward enabling us to furnish empty cars. We think it would be profitable and enable us to make the haul. If it would not, then we would have to ask a further advance.

All rates should be reasonably profitable. Taking this year as the basis, the 50 cent rate is a low rate but it is a rate that should be compensatory. I think it would. At any rate, it would be more nearly compensatory than the existing rate.

On the Great Northern we have mountains to cross. I have been over the Union Pacific road once. That is all. I know what their grades are from their condensed profile. I think it is 1829 or 1830 miles over the Great Northern from Seattle

to St. Paul. I do not know how far it is from Portland, Oregon, to Omaha, over the Union Pacific road. I do not know the distance. I said the lumber movement had increased the cost because of the increased number of cars required to be hauled west empty. The lumber movement has increased since 1898. On our road I should say we were hauling then 15 to 20 cars. Some days we might have got up to 25. It has increased up to 150 to 200. I don't carry the figures of the movement of lumber on our road in my mind for the last four or five years, only in the most general way. The reports on our road do not show that there has been a steady decrease in the movement of lumber. In some districts the products of mines have increased in carriage on the Great Northern very much more than the carriage of lumber, and it may be that the development of iron ore on the eastern district would make the whole ore product greater than it was in previous years. I think that would be the case. There is not any particular product that furnished over 50 per cent. of our tonnage. I understood you to say iron ore. The products of mines would be coal as well. The figures in the report to the Interstate Commerce Commission, which says that the products of mines on the Great Northern road were 9,435,000 tons and amounted to 51.75 per cent. of our total haul, include coal too. The figures relating to the percentage of the products of the forests hauled on our line as you have them, apparently would be better than my recollection; but the figures of the whole road would not throw any light on the question in issue here, because Minneapolis, for instance, which was a very large lumber district, 3, 4, 5 or 10 years ago, has been getting less every year, until last year I think there were only one or two mills. I think they used to cut about 800,000,000 feet, and I think it is down now maybe to 300,000,000 feet. Those figures filed with the Interstate Commerce Commission by our road are the correct figures and they are certified to under oath by whoever signed it.

I stated that this rate was first put in when the road was completed in 1893. That was my recollection. I did not know that from Portland, Oregon, there was then a 45 cent rate in effect on fir. If you ask me if I knew it today—I understood that the rate from Pacific Coast points to Omaha was 50 cents. I did not say at that time. I said now. I do not know what the rate was at that time. One of the reasons for this increase in rate is to make up for an increased ex-

pense account on the Great Northern, on account of the haul, by reason of this expense, being unremunerative at this time. That is correct. The advance is to make a lumber rate compensatory, and not that other business in other states should contribute to carrying lumber for less than it costs. That is the fact today. There is no doubt about it. Taking the Great Northern road for a series of years the operations of the road have been profitable. I do not know whether in a store business there are some articles that are sold very closely as compared to others. Just let me finish. I don't know how many there may be. I don't know what the practice is in stores, but if any article is sold for less than it costs, I think it is to an extent either an advertisement or an attempt to make somebody think it is the cheapest place to buy. It is not a policy upon which anybody can make money, by selling or furnishing any commodity for less than it costs. I don't think we carried any ore to the steel trust from the mines in northern Minnesota this year. We did last year some, but not much. The ore that we carry is carried for the outside people. It is carried from the Mesaba Range down to the lakes. We carry it to the lakes by rail. The rates have not been raised on that. We carry that ore one hundred miles and we get eighty cents a ton. We get 8 mills. The lumber rate is about 4 or 4-1/2. I don't want the Commission to understand that that is the average rate received by us for lumber hauled by us on our system. That is the rate from the Pacific Coast. That is not the rate to the farthest point east on our line. It is the rate per ton per mile to take it to Minnesota transfer. Now, the rate from Puget Sound points is the same, whether we took it at Everett, where we first strike the water of Puget Sound, or whether we took it from the International Boundary, one hundred miles or more north.

These rates are blanket rates as far as Puget Sound is concerned, if I understand what you mean by a blanket rate. The same rates would apply from Seattle on our road which is the farthest point south to the farthest point north. There have been reductions in rates recently made by the Minnesota State Commission and the Legislature covering roads in Minnesota. We are defending. There have been both reductions of rates there and attempted reductions. I think the Commission raised the rate on coal through this district, where there is no coal consumed. I am familiar with the fact that in places

where there was no coal hauled they raised the rate and where the coal was hauled they reduced it. I am familiar with the fact that the Minnesota State Commission and the Legislature put into effect tariffs recently that were so far reductions in the rates throughout the State of Minnesota, that the judge characterized them as a disgrace. I know that was the case.

I do not know what the advance that was made by our road was. I was not present at the hearing of the case. I do not know that it was attempted to be shown there that the cost of moving traffic was 2.29 mills on a through rate and 5.74 on a local rate. I never heard of the figure before. Any statement that is made in the reports of the Great Northern Railway Company to the stockholders is meant to be absolutely true.

(The attention of the witness was then called to the following quotation from the report of the Great Northern Railroad to stockholders for the year 1907:

"There was a large loss in revenue, due to the greatly reduced amount of traffic during the winter months, caused by the snow blockade and the severity of the weather. The depth of snow in northern Minnesota and in North Dakota was greater than ever known since the line was built. Every effort was made to keep the line open and move fuel and supplies to the exclusion of other traffic. This caused a direct and unusual expenditure of over $950,000 in addition to the loss through the suspension of traffic movement.")

Continuing the witness testified, as follows: That is correct. The increase in cost of operation, that nine hundred and odd thousand dollars, was due to the depth of snow. The increase in the mileage of the system would not add materially to it. I do not know that the increase in the mileage would not rather increase, in that section, the traffic on the main line. The increased mileage would decrease the average cost up to a certain extent.

(The following quotation from the report was called to the witness' attention:

"The increased cost in operation and maintenance of the property is due to several causes. There was an increase in the average mileage of 75.92 miles.")

Continuing, the witness testified: That line, for one or two years, will not arrive at its full bearing of traffic. Everything that is in that report is true. In some places it is true that a good deal of increased cost came from station service due to increased business; and in other places that would not apply. For instance, in the State of Minnesota, the number of sta-

tions where the revenue would amount to $100,000 a year has decreased in the last seven or eight years, so that there would be no reason for an increase in station service. There is an increased cost on account of wages.

What is in this report to our stockholders as giving the reasons for the increased cost is true. The expenditure of certain sums as extraordinary expenses, replacement and renewals would increase the operating cost at the point where they were made. I would like to explain that. For instance, take the Willmar & Sioux Falls Line, a line running from a point a hundred miles west of the Twin Cities down to Sioux City. Any renewal there would be an increase in the cost of operating that road, but it would not cut any figure in the trans-continental business, because the trans-continental business would not move that way.

The Great Northern Railroad Company was organized in 1890. I was in it at that time. It has paid dividends continuously ever since. The first few years it paid at a lower rate. I am speaking of the Great Northern. For the last ten years I think the dividends have been about seven per cent. I will explain your question whether we have not accumulated during the last few years monies, properties or accounts or some sort of property over and above the expense of our operation, the creation of funds and the payment of dividends, so that you will understand it. The stock got 7 per cent. last year and for some years previous. I make a calculation for my own satisfaction. The average rate on the stock and bonds last year, I think, was 5.68 per cent. As the accounts are kept, there was a surplus beyond that, a balance of earnings beyond what was paid for interest or dividends, but that has gone on for years. And other amounts. For instance, if we get at the capitalization of the company, our capitalization is very low. It is only $38,000.00 a mile, including everything. Now, there are about $35,000,000—maybe more than that—not represented at all in the capitalization; $35,000,000 of money upon which nobody pays any returns. I think the real surplus of the Great Northern would be something more than the figure $28,029,307 shown in the report for 1907. Referring to the issue of the consolidated mortgage, 6 per cent., 50 year, gold bonds, on May 1, 1883, issued to stockholders to the amount of 50 per cent. of their holding at the price stated to be of 10 per cent. of the value thereof, at that time the company had expended, if I remember correctly—and my figures are very nearly correct—between eleven and twelve million dollars, and they

capitalized $9,000,000 of the money that had been expended; and they had built portions of a railroad for which there were neither stock nor bonds in existence. The surplus of some $35,000,000 was expended on the road in cutting grades down and widening banks and putting in steel bridges. It is really an expense, and the shareholders—what they get out of it is simply what they get by way of dividends. So that when I say we have accumulated that surplus, I mean we have put that much into our property which the stockholders have not paid in out of their own pockets.

This grew out of the method in the first instance of keeping accounts. The railroad commissions of the States made a formula for accounts and we made our reports conform to that, so that we would not have to keep two sets of accounts, one differing from the other. Now we have had to make good, depreciation to some extent. We have never gone far enough and no road has gone far enough, to make good the depreciation on their equipment. I think the proprietary companies that operate the Great Northern are practically all consolidated now. They have operated with the Great Northern prior to this time.

The Great Northern Railway Company has never issued a bond since it was built. When it was built we paid as much attention to looking for low grades as we could, and thought we had a good selection of roads. Our reports do not show that that road has been almost a marvel in railway enterprise in this country. I think they show a lower operating cost than the average road. Our train haul has constantly increased, and last year, including company freight and commercial freight, it would be whatever the report shows. Our cars have increased in capacity constantly, and we have spent large sums on improving our road bed; also in making the rails heavier; all of that, and we have to even re-locate new lines in the mountains that we thought were at very low grades. We have also increased the carloads quite heavily. We have tried in every way to economize and to get more for the dollar we spend. If we should go back to twenty-five years ago and take the expenditures of that time, it would be quite large, and we have done everything we could to increase the load, to increase the carload and the trainload. We have laid heavier rails. We have re-built sections of the road to get lower grades, and in that time our rates have been reduced from two and a half cents a ton a mile to three-quarters or about three-quarters of a cent a ton a mile. I think the total reduction in twenty-five

years would amount to seven hundred and fifty million dollars. That is not about the same thing that the other roads have done. The other roads have not done it to the same extent. Very few roads have done that. The Northern Pacific have increased their train load. There was quite a sharp jump in our operating expense account for the Great Northern in 1907 over 1906. The operating expenses were not written up at any time last year more than any other year before, but were written up just the same. The Great Northern and the Northern Pacific own a great majority of the Burlington stock. The net earnings of the Burlington over the amount necessary to pay the interest on the bonds is like another surplus that has gone into the Burlington to make good what had not been provided in former years, and the Burlington has spent all that it has earned above the amount it devoted to the stock, and has spent a lareg amount in addition. Those bonds issued for two hundred million dollars were issued in 1901.

I am also familiar with the Burlington earnings. All the roads are paying dividends regularly. They are raising additional money, they are creating these replacement funds, funds of various kinds, and they are raising additional money besides to put into the property. I should not think the sinking fund of the Burlington today was as large as twenty-nine million dollars to retire its bonds. Some of the bonds of the Burlington have a sinking fund that is a considerable proportion of the outstanding bonds, but the outstanding amounts are not large of those issues. The reports will show that, and they will be a great deal better than my recollection. I don't know whether that amount you mentioned as a sinking fund includes bonds that have been paid for, but I think it does include bonds they have bought in past years and that would run back thirty or forty years. That fund came from their current earnings.

Mr. Teal: Out of the money that people have paid for freight and travel?

Mr. Hill: They have no other income.

Mr. Teal: So that when that road's bonds are paid for, and it pays in dividends and renews itself, as it is doing, people who have paid the freight will have paid it, and not the stockholders? Is that correct?

Mr. Hill: If the company earned that money, it belonged to the stockholders and they could divide it.

Mr. Teal: Irrespective of the amounts?

Mr. Hill: Yes, sir.

We do not by any means have a right to charge anything we want on our roads. We have a right to charge a reasonable rate. If you will allow me, I think I can clear your mind a little. Take the Great Northern and the Burlington Road. The Burlington Road had a land grant, and the proceeds of that went directly into a sinking fund. The Great Northern's predecessor, the Manitoba Road, had a small residue of a land grant in Minnesota. That land grant has been used to retire I think eleven or twelve million dollars of bonds. They are not in existence. Nobody has to pay the interest on them. The mortgage that secures the two hundred millions of bonds does not provide a sinking fund against those bonds, and I will go a little further to make that clear. Now the Burlington Road, through the retirement of bonds and not increasing its stock—it built roads with bonds and used its land grant and its sinking fund to retire those bonds. The Burlington, taking its stock and bonds at par, would be capitalized for somewhere about thirty-two thousand dollars a mile. We bought that stock at two hundred, and it made the road cost between thirty-eight and thirty-nine thousand dollars a mile; and at that it is the cheapest of any road running out of Chicago.

I am not familiar with the fact that the Burlington last year earned a very large surplus, I think its surplus was somewhere in the neighborhood of four or five million dollars. I know the surplus was not $13,155,000 in a year. To some extent I am familiar with its operation and maintenance accounts last year. If they took an engine that was carried on their books at what it cost and sold it for scrap, I suppose they would have to charge it off. It is not true that they had nothing but scrap engines on the road, but they had a very large number of old-fashioned small engines that were of no use, that could not transact the business of the present day at a remunerative price. The business of these roads has grown, and as the business has grown, the rates have decreased, and with the development of the country the road has received its benefit and as everybody prospered, we have all prospered together. We certainly cannot prosper unless the people who are patronizing our road prosper. The Great Northern stockholders received the ore lands and the company never paid a dollar for them. It is true that the stockholders of the Great Northern will receive millions of dollars under that contract, but it had no more to do with the railroad than if I should buy this building, it would have to do with the railroad. I bought those ore lands and paid for them. The Steel Trust has a lease on those ore lands.

The traffic density on the Great Northern Road has constantly increased. The Great Northern never issued a dollar of stock that was not paid for in money or in property, and where it was paid for with property, the property was figured at less than it cost. In 1898 the stock of the Seattle and Montana Railway, that is, the Coast Line and the Terminals on the Coast, was distributed to the shareholders. I do not think it was to the extent of fifty per cent. of their holdings in the Great Northern. About twelve million dollars had been invested in railroads west of the Cascades and in terminals, and that was taken by the Great Northern at ten million dollars. The Great Northern paid for it in stock. That was not equivalent and it was not considered as equivalent to a cash dividend at that time of fifty per cent., because the money had gone into the property. I don't remember what Great Northern stock was worth then on the market. At various times from 1893 to 1905 we issued stock of the Great Northern Company to the stockholders for which the company received one hundred cents. At times that stock was worth very much more on the market. I do not know whether these various rights which have been secured by the stockholders, taking an original shareholder of 1889, who in 1906 held the stock he had originally subscribed for, and had sold it at 1906 prices, in addition to his dividends would have made him nine hundred per cent. in the Great Northern Company. I should not think so. If he had held it until 1907 it would have resulted very differently. If he had held it until this time he would have made very little.

The Great Northern's business, compared with November a year ago showed quite an increase; November a year ago, bear in mind—on the 15th it commenced to snow and on the 17th there was eighteen inches of snow. Everything has gone on up to the present time pretty well on our road, except that the lumber rate has been too low. We are not dealing with the average. The railroad company has managed to make a living and to make a dividend and to make a reasonably good showing. Now, through all that we are asked in Minnesota and we are asked in almost every state on the line of the road for lower rates, but they will cite to us a lumber rate of about four mills and say, "You have maintained that for all these years." Nobody has struck me or shot at me or anything of that kind. I don't know that I have tried to injure anybody. Now, hard times have come on the coun-

try. I have not the remotest idea that the advance in lumber rates will put these people out of business. You are entitled to your opinion, whether we are hauling lumber at less than cost. Let me say this. Within the last week our lumber loading is increasing. I got a telegram today in regard to the loading of the principal commodities. Our lumber has increased thirty or forty cars a day more than it was averaging three or four weeks ago. I say the lumber movement is increasing in the last week. I get a report by wire. This lumber is moving from the Pacific Coast, or west of the main range.

Mr. Ben Campbell was our General Traffic Manager. We tried to maintain that rate as long as we could, and we made a very great effort. In 1905 we were carrying quite a large business going to Puget Sound, that was going out by sea that we are not carrying now. In other words, we were making empties a great deal more than we were in 1906 and 1907. Mr. Ben Campbell, I think was our General Traffic Manager in 1905. He has been our manager. Anything he issued is a great deal better than what I can say. I don't remember ever having seen a circular signed by him. I don't remember talking with him on the subject of issuing a circular calling on our agents to get more lumber.

Re-direct Examination.

When you get up to three, four or five hundred miles, the question of the length of haul does not cut so much figure. The terminal charge and the delay to cars in the terminal is no greater for two thousand miles than it is for five hundred; but when you distribute any advantage there may be from the long haul, in having to pay so large a proportion of terminals, when it gets to be over four or five hundred miles, then it is almost infinitesimal. When the O. R. & N. hauls its lumber to Huntington, the end of its road, you have no interest in it beyond that. It makes no difference in the cost of the operation of the Oregon Short Line, which runs from Huntington to Granger and terminates at Granger, whether that stuff goes to Denver or Chicago. After lumber or any other product begins to move in considerable quantities and has been gathered up, the additional cost per mile as it would be shown in the cost per ton mile, after it has moved seven or eight hundred miles, in moving it a thousand miles further

would be very small. Of course, terminals are as expensive whether the car comes twenty miles or two thousand, if it is loaded with the same commodity and has to be unloaded at the terminal point. If seven or eight mills for a thousand miles would be a fair rate, a four mill rate for twenty-four hundred miles would be a ruinous rate. Either one is too high or the other is too low—at that distance, let me say, seven or eight hundred miles.

The following hypothetical question was then propounded to the witness by Mr. Cotton, counsel for the Union Pacific system:

I will just describe the Union Pacific to you, and then propound a hypothetical question, based upon your general knowledge. The Union Pacific system, from Granger to Cheyenne, consists of a single track road, connecting west of Granger with the Union Pacific is a line extending from San Francisco, the Southern Pacific, running into Ogden and then connecting with the Union Pacific is the San Pedro line. Coming down from the north is the Oregon Short Line, from Butte, and the Oregon Short Line extending to Portland. So that at Granger there is concentrated there on the Union Pacific the business of practically four roads in the West, and the traffic density of the Union Pacific between that and Cheyenne, where the road then divides, one branch going to Omaha and one to Kansas City by way of Denver, is very great. Mr. Teal's figures show that the traffic density on the Great Northern is 971,000 tons, but that the traffic density on the Union Pacific is 990,000 tons. And as a matter of fact most of that traffic density, that is, the great increase in traffic density, is between Denver and Cheyenne. The tracks are exceedingly crowded. There are freight congestions there frequently along the line of the road. I therefore, in view of those facts, wish to ask you what, if any, advantage from cost there is in the Union Pacific receiving this lumber at Granger and then hauling it to Omaha, as compared with having it stop, say, at Ogden; that is, how they would increase their ton per mile haul as a result of hauling it over a road of that character, simply as the result of increased distance. Would it decrease or increase the expense of the operation?

To this question the witness answered:

Up to the extent that the road can move its trains with reasonable regularity, the increase in tonnage would be an advantage. The increase in tonnage would enable the road

to operate for less. In other words, if everything is moving right on the road, not crowding it beyond its capacity, it would be a means to enable the company to move its traffic at a lower cost; but if crowded to an extent greater than the capacity of the road, it would increase the cost very quickly and very materially.

A million tons average traffic density on the Great Northern railway takes in all its branches, and I assume the same thing would apply to the Union Pacific. Now, we have portions of the main line where, at times, our traffic is fully two-thirds of the average traffic of the New York Central, moving on a single track. A portion of the New York Central has four tracks, a portion of it has two tracks, and a portion of it has a single track; but these average figures are very misleading. When you get up to a million and three-quarter ton miles to the mile of road on a railway where the gradients are one per cent. or more, the expense of hauling the business would be unreasonably high.

On account of the density of the traffic and the traffic getting in the way of moving trains and the time consumed, there is not time enough to get the trains from one sidetrack to another between trains. They have got to be held back.

Question. Mr. Cotton. Then if the traffic density on the Union Pacific from Granger east was very great, it would not be your opinion that the additional long haul on this lumber would tend to decrease the proper charge per ton per mile which the Union Pacific should make for hauling that traffic after it had already hauled it, say, a thousand miles?

Answer. Mr. Hill. The increase between Granger and Cheyenne would not have anything whatever to do with the cost between Huntington and Portland; but the increase between Granger and Cheyenne, if all these lines were concentrated at Granger, and increased the tonnage to such an extent that it was greater than the capacity of a single track road, you would find your expenses ran up very rapidly.

When the traffic becomes so dense that you cannot handle it to good advantage on a single track road, then if you have the money it pays you to build a double track road. The Great Northern provided money a year ago, or started a plan to provide money, and we are not at this time looking for money; but we did not provide money for double-tracking the road. And there is another thing; the whole country there is short in means of transportation. We are getting ready to

double-track the west slope of the main range. The Great Northern is practically double-tracking from Seattle north. I think they are all going to stop unless they raise the money. If there is so much money in lumber and you have made so much out of your stumpage, have made an enormous profit, why don't you build a railroad of your own? We would like ta have you do it, and then you would know how it was to run a railroad. You could not raise a dollar on a proposition to build a new railroad for the sole purpose of transporting freight at from four to five mills per ton per mile. The Pennsylvania Railroad, I think, has the heaviest traffic in the United States, between Pittsburg and Philadelphia, and if I recollect rightly their cost is about four and a quarter mills per ton per mile; I think about four and a quarter—4.2 and something, I think.

I testified to there having been a rate on fir of 90 cents from Westminster to Winnipeg on the Canadian Pacific. The condition of the haul of our ore tonnage over the Eastern Minnesota, now the Great Northern is on a three-tenths maximum grade, sixteen feet to the mile, and in favor of the load. That is sixteen feet to the mile down hill. No adverse grade. It is one class of traffic, and the cars are loaded to their full capacity, and the engines are hauling to their capacity. There is no switching to it. The mines put it on the track and we bring the road engine and couple on to it and bring it down to our docks, where it is unloaded by gravity, and we get about 75 or 80 miles a day out of the cars. That traffic is moved in solid train loads and about 12 or 15 trains a day. The capacity of the cars is one hundred thousand pounds, fifty tons net. Over the double track, down, we run double track to a point called Brookston, and from there the track divides; the empties go up the west line and the ore down the east line. From Brookston down they haul from 60 to 75 cars, they haul three thousand tons sometimes. That is on good days and good rails; they cannot always do that. There is no limit except the brakage power of the draft rigging. The train loads run 2500 to 3000 tons; they sometimes run, I think, 3200 or 3300 tons. That is only occasionally.

If the amounts which have been referred to as surplus and which have been invested in improvements and additional equipment had been charged to operating expenses, it would interfere with the dividends of some railroads that are now considered steady dividend payers. For the year ending June

30, 1907, the ratio of operating expenses to gross earnings was higher than it has been for several years. Taxes are higher, too; taxes are constantly increasing. If these betterments and grade reductions, additions to equipment and other improvements had not been provided, the present rate of traffic would not have paid the expenses on the basis of twenty years ago.

Re-Cross Examination.

Asked whether it was not very much more economical for a railroad to receive a loaded car at Granger and unload it on the exchange track at Cheyenne than it would be if that car originated on its own rails or was unloaded on its own rails, the witness testified:

If it reached its destination at Cheyenne I do not see that it would make any difference. The terminal charge would have to be made, or if it went to Omaha the terminal charge would have to occur there. If I understood Mr. Cotton he meant whether the cost would be increased or decreased by the enormous amount of traffic centralizing between Cheyenne—than, as he said, if it was going to Denver or Omaha. Unless that car was unloaded at Cheyenne the difference would be merely due to the increased cost growing out of the railroad undertaking to do more than the capacity of a single track road could do. In some places the two terminal charges, one at the point of origin, and the other at the point of destination, are very high. When you get up to four hundred or five hundred miles or to three hundred miles, the terminal charge is material. When you get up to five or six or seven or eight hundred or a thousand miles, it becomes less and less material. The terminal charge is also affected largely by the location of the delivery points. The cost in Chicago is very much greater than the cost at a station 25 miles out of Chicago.

Since the Great Northern quit issuing passes and giving rebates, there has not been a material increase in its income. The passenger income, I think, has shown a decrease. Its rates have been reduced largely to two cents a mile. The ore movement to Lake Superior is not entirely an empty haul movement westward. There is a considerable movement of coal going into the mines, and supplies. I could not say about how much nor how many cars a day. There is quite a population there, and then the mine uses steam, and there is quite

an amount of coal hauled in there. We have always tried to credit the lumber movement with the supplies that go westward and are needed in that business. We have always tried to impress on the merchants of the coast the importance of trying to make every empty car good, because it enables us to furnish an empty car to load lumber back, and to pay that much more money out in the country.

I have not been out in Western Washington for two weeks or more. I received advices a few days ago that the lumber movement was increasing. I received these advices from St. Paul. They did not relate to any particular places in Western Washington, but to the entire loading of lumber as compared with a month ago. A month ago it was 115 cars to 135 or 140 cars a day. About a year ago this time or shortly after there was an embargo on. I had this report especially with regard to lumber this week and lumber last week, and lumber at a corresponding day last month.

I can give you the exact facts about the increase in the lumber movement. On the eastern end we load from one hundred to one hundred and twenty cars a day under ordinary conditions, when business is normal. Now, that loading on the east end drops down about seventy-five cars a day. East and west we were loading, when I left home two weeks ago or more, we were loading west of the range on the coast, about fifty or sixty cars, and about the same time between the Cascade and the main range; generally a little more west or on the coast points; that has been up to the time I left home. These were being loaded for eastern shipments mainly, east of Spokane and in the Flathead country, some of that goes into Montana, some of it goes to Canadian points, up through the Sweet Grass connection. I have no idea what mills loaded those cars. Our traffic people can give you the loading every day in the year. I do not know whether it is railroad material, because we are not building any railroad now.

D. M. CLOUGH (Page 1247) testified for the defendants:

I reside in Everett, Washington. I went there eight years ago last February. I am in the lumber business. Before I went to Washington I resided at Minneapolis, Minnesota; resided in Minnesota forty-two years. During most of that time lumber was my business. I gave up the lumber business in Minnesota in 1893. From 1893 to the time I went to the Pacific Coast I was in politics. In 1893 I was lieutenant governor

of the state, became governor of Minnesota in 1894, and was governor from 1894 to 1898. I served two terms.

When I went to the Pacific Coast I located at Everett and engaged in the lumber business. I became associated with D. M. Robbins, of St. Paul; M. J. Clark, of Grand Rapids, Michigan; Mr. Walcott, of the same place; Mr. Morley, of Michigan; E. A. Nickerson, formerly of Minnesota, but who went out to the Sound at the same time that I went out there; R. H. Hartley. I think those are about all the stockholders in our company. Our organization was incorporated and organized under the laws of the State of Michigan. Under the laws of Michigan we are obliged to make a detailed report of our business each year, filing it with the secretary of state in the State of Michigan. At least, I suppose so. Our secretary of state resides at Grand Rapids, and we sent our reports to him. I suppose that is the case. They have to be filed before a certain day each month, which is about the 20th or 25th. If they are not filed by that day we are fined, and the penalty is quite a heavy one; I have forgoten just what it is. Anyway our business has always been reported, in accordance with the law, signed by three directors and sworn to.

When we located at Everett we bought very little timber. We built a saw mill, a lumber plant, and have manufactured lumber; we have been strictly manufacturers of lumber. We have bought our logs in the open market. We have no long time contracts for logs. We have paid different prices for logs during the operations, but our average price for five years commencing January 1, 1902, up to January 1, 1907, averaged $6.72. When we first went there, logs, of course, were very cheap. The first logs we ever bought in the State of Washington, number twos, we paid $4; merchantable was $6; and flooring was $7. That was the highest year. The price of logs advanced at or about the time of the San Francisco disaster. They did along during that year some time; I do not know whether it was just at the time of the San Francisco disaster or not; but logs did advance later in the fall, I am sure.

Our mill is located on tidewater. We also have rail connection. We ship a great deal more by rail. It was intended that we should do entirely a rail business, but where we are short of cars we do some cargo business. These prices which I have given for logs are prices delivered at the mill. That includes towing. We have bought our logs whenever we could buy them for the lowest money. We have bought a good many

logs of the Association, and we have bought a great many logs of loggers outside of the Association. There are a great many loggers on Puget Sound. I do not know how many, but a great, great many,—and there are a great many manufacturers. A portion of those gentlemen have formed an association, quite a proportion of those loggers have formed an association, and it is called The Loggers' Association, just the same as the manufacturers have formed an association. Each logger belonging to the Association has the privilege of selling his own logs to whom he sees fit to sell them to, but the settlement for that sale must be made through their secretary. The association has a secretary, and the settlement must be made through him. I have settled through the secretary whenever I bought logs from any member of the Association. These were fir logs which I have bought at these prices. Our company does not manufacture any cedar. I say they are fir logs; as a matter of fact they are also spruce and hemlock, but principally fir.

The name of the mill which I operate is the Clark-Nickerson Lumber Company. It is strictly a lumber mill. There is no shingle mill attached to it. We produce fir, spruce and hemlock of all grades and all kinds. Our cost of producing lumber from the time we commenced operations has been about $3.75 a thousand. We are trying to cheapen the cost a little every year, and we have, a little mite. There has been no material difference in the cost, but we are trying to cheapen it a little every year, regardless of the little increased cost of labor and material. We are able to do this by putting in some new improvements, improving our mill. For instance, this summer we put in $20,000 in permanent improvements. We took out a single band we had and we put in a double cut band in its place. That increased our cutting capacity about twenty thousand a day, with no extra expense—the same number of men. The price of labor has increased. The better the times the poorer the men seem to be. We get less work out of men when times are good than we do when they are bad. We have been able to offset this increase in the price of labor by improving our mill in every possible way, increasing the cut of our mill. The effect of the improvement has kept pace with the increased price of labor, and a little bit more, with our company. I could not say whether our mill has all the modern improvements, or whether there are any better mills in that country. We are very well satisfied with ours. I never saw Mr. Bloedel's mill in my life. We started in cutting about

125,000 feet a day. Our present capacity averages now 175,000 feet in ten hours. The mill is not any larger. Its increase in capacity has been brought about by the installation of improved machinrey. A new mill, of course, never does as well right up to its capacity, even with the same machinery. We built that mill in the year 1900. I hope that it will not scrap in three years from now.

In figuring our cost of production at $3.75, we have taken into account our renewals and repairs. This year we will probably put into our mill in renewals and repairs $40,000. That is the way we keep up the mill. I remember one year before this we put in $34,000; and usually we put in about $24,000 a year. By investment or improvements we are able to keep the mill in substantially as good condition as when it began. Our mill is in very much better condition than when we began. Our investment we capitalized for $100,000. What other money we needed the general manager—and I am the general manager—borrowed, and paid six and seven per cent. interest on it. But, thank the Lord, it has all been wiped out, it has been paid back from our profits. Our capital stock is $100,000, that is all we ever had. That has all been paid back to the stockholders. There is no stockholder in our company who has one cent of money in the business. They have always received, from first to last, from six to seven per cent. annum. They have always been paid their dividend of six per cent. per annum every year, and have already been paid back their principal. No stockholder in the Clark-Nickerson Lumber Company has a cent in the business, and we owe no man a cent, except the monthly expenses. We pay off our help and our bills the 10th of every month. On the 10th of every month we pay our labor and our bills for the previous month. When I came down here I had not our profits exactly. I knew about what they were, but I did not have them exactly. I could remember about the report of the different years, but I did not have the figures exact, and so, after listening here for several days, and seeing that you are quite exact in the matter of figures, I thought I would have my figures exactly, and so I wired to our office yesterday, asking them to wire me our profits or losses for each year since we have been in business. I received a reply to my message this noon, and I can read it to you. There is no guess work about this. You can check everything I have or say. We commenced to build our mill on February 26, 1900. We started the mill then and sawed a log September 15th of the same year. We

merely started. We did the most of the sawing from that time until December 30th for ourselves, but we did ship a few cars of lumber, and the first year our profits were $1,634. We commenced business the best we could. Of course we went there as old lumber men, but we were new men in the country. We found we had a great deal to learn. We had to establish ourselves in business, and we did so. Our profits were not as large as they are now.

In 1901 our profits were $29,267, which was 29 per cent. and a little over on our investment.

In 1902 our profits were $96,759, or 96 per cent. and a little more on our investment.

In 1903 our profits were $55,721, or 55 per cent. and a little over on our investment.

In 1904 I am ashamed to tell what, as that was a bad year. In that year we made a loss of $3,358.

In 1905 our profits were $72,186.

In 1906 our profits were $193,060.

In 1907 we do not know just exactly what they will be. We have not figured up what they will be; we do not figure up until the first of January; but I do know that I have sent this year to our stockholders, which I am authorized to do whenever we have any surplus money—to send it to our stockholders pro-rata, according to our stock—I have this year already distributed among stockholders $130,000. We certainly have made that $130,000, or I could not have distributed it among the stockholders. We haven't borrowed any money. We do not owe a cent of money, and the best of it is we put in $20,000 this year in permanent improvements, and they have been paid for.

Another thing that pleases me is that on January 1, 1907, we had piled in the yard about 6,600,000 feet of lumber. We were closed down for a little repairing about three weeks ago. So we took account of stock, and we had in the yard 13,600,000 feet—and that after distributing among our stockholders $130,000.

That is about all there is to our profits. This telegram is a telegram that anyone can look at, or keep, if anyone wants it.

Every cent that be borrowed from the beginning has been paid back. Early this year some of my associates and myself imagined that we wanted to build another saw mill. My associates liked the business, and we talked it over, and I told them I thought we had beter build a shingle mill. I wanted to see how much money there was in the shingle busi-

ness. So we decided to build a shingle mill. Well, they said that they didn't know, they thought perhaps this increased rate was going to be put into effect, which was spoken of then, and they wanted to know how much money I thought there was in the shingle business, and I told them that I thought we could get 50 per cent. on the money we invested, and if the rate was increased it would make a difference of 16 cents a thousand, there would be that much less in our profits, that is all, and we had better build a shingle mill. So we went on and built a shingle mill, and that mill had a capacity of 600,000 a day. That is not the Clark-Nickerson Company; that is the Clough-Hartley Company, located half a mile away from the Clark-Nickerson Company. We built a mill, and we run it a little over two months, and while we ran it we made a profit of about 100 per cent. on our capital; but of course we could not always do that. Shingles were very high this fall, as you all know—very high. On November 1st we closed down because there was not any sale for our shingles. We paid all prices for cedar logs for our shingle mill. We paid all the way from $11 to $18. We bought a few for $18, and all the way from $11 up to $18. I was not at all familiar with the prices of cedar logs when I came into the country. During the two months that we were operating the shingle mill, it cost Clough-Hartley, that is, including insurance and taxes and everything, about 70 cents a thousand to manufacture shingles, to keep up our mill. That does not include the cost of the timber. A thousand feet of cedar logs will make ten thousand shingles. There is not supposed to be any over-run in the ten to one. The base weight of shingles is 160 pounds. We established a dry kiln in connection with our shingle mill. We dry our shingles down to about 140 pounds. We try to, and I guess we do. Anyway I know our under-weights amount to about 15 cents a thousand. We aim to sell no shingles on the basis of 160 pounds, but we sell entirely on a delivered list and whatever the under-weight is, we get back. If they weigh 160 pounds there is no under-weight; if they weigh over that we make it up to them. Whatever they weigh less than that they have to pay us back. I have known of shingles over-weighing. We never had any. Our overage under-weight is running about 15 cents, just about enough to take care of the over-run.

We sold a few shingles in Missouri River territory; I do not think over three or four cars, nothing to amount to anything. The over-run in the log scale and the lumber scale is owing to where you ship your lumber.

For rail shipments you have a very large over-run. For cargo it is very much less, for the reason that cargo trade, if you sell a thousand feet of board, you have to cut it one inch; if you are cutting a two-inch piece of lumber, it means two inches, they are very exacting. You understand by rail our two-inch lumber is shipped one and five-eighths inches; our inch boards are shipped three-quarters of an inch. Of course it might be that one wanted some rough inch boards, an inch thick, but I am talking about a very large majority of our lumber.

All inch boards are dressed three-quarters of an inch, but are sold an inch. All drop siding is three-quarters of an inch; five-eighths ceiling is measured an inch—called an inch. Flooring, of course, is thirteen-sixteenths. I think that is what it is. Well, we only have to saw our dimension for the eastern trade, an inch and three-quarters, where by cargo we have to saw it two inches. You could just as well cut your boards less than an inch, as to take them to the planing mill and surface them to three-quarters, put them all in shavings, and burn up your shavings. Therefore, we have a very large over-run on all rail trade, but not nearly so much, nothing like it, on the cargo end of it.

Our over-run on rail trade will amount to a dollar a thousand. I am familiar with these price-lists at home, but not nearly as much so as some of the other people in our company. I hardly ever look at a price-list. Our underweights on rail shipments amount to about a dollar a thousand. The standard length of logs is forty feet. Logs shorter than that are not any cheaper than logs of that length.

Cross-Examination.

Our mill is located at Everett and is both a rail and cargo, principally rail mill. With others of our stockholders I selected the location at Everett. I thought it was a very favorable location, or I would not have gone there. We think we have a modern, up-to-date mill. I could not tell you the cut during the first month we operated in the year 1900. We just started that year. What little we cut, the most of it we cut for ourselves, for wharfing, and so on. I don't know what the cut was that we made for the market. We made $1,634 profit. I don't know what the cut was, nor what it was for the year 1901, nor for 1902, 1903, 1904, 1905, 1906 and 1907. I could not tell you what our total cut was during all that time.

I think our cut has probably averaged somewhere about 45,000,000 feet a year, but I don't know that. That is the best of my recollection. The capacity of our plant, at the present time we are cutting 175,000 a day. The capacity for the average time that we have operated, I should say to the best of my judgment was 150,000 a day. That is all the time. We did not cut as much the first few years. We are increasing our cut all the time. I employ on an average about 160 men. Our labor is as efficient as labor goes now-a-days. We get the best men we can. I don't know whether we pay as high prices as are paid there. I couldn't tell you about other people's wages. Our cost of production is about $3.75. I include in that everything, expense of all kinds. I couldn't tell you how much our labor costs us. It all simmers down, and all of it is expense. It doesn't matter what, it is all expense. Everyone has a different way of doing business. We keep up our mill in first-class order, or we intend to, and we think we do. It is conceded by everybody who comes there that we do. If we should put in $25,000 into our mill this year, keep it up as good as it was the year before, that is charged to repairs and expenses. We do not charge anything to cost under the item of depreciation. We do it the other way. We keep our mill up, and our mill is worth more today and would sell for more today than it would the day we built it. We charge for interest and taxes, whatever it is. We charge taxes and insurance to expense. That is an item on the cost of this $3.75. We charge it to the cost of manufacture. I could not tell you what it was last year, nor what it has been at any time, just exactly what it was in dollars and cents. I wouldn't know how to do business in any other way. I do not remember the amount. I know our mill is as good today as it ever was. It is a good mill, I think. I am not familiar with the Government report that the timber on that coast will be exhausted in twenty years. I do not think that is true. I think our mill is good just as long as I keep it up. I have had some experience in Minnesota. I know of mills in Michigan or Minnesota that have exhausted the timber supply and have been sold for a trifle. I do not anticipate any such thing in Puget Sound in any later day. I think there will be timber there for fifty years, but not enough to run all the mills that are running now. There will be plenty of timber there in twenty years in my judgment to run every mill that there is there today, even those mills that depend upon buying their logs and do not own their own timber. You understand all the timber tributary to Puget Sound is tributary to the Clark-

Nickerson Lumber Company's mill. It can be towed from any point. It can be railed in there, and it can be towed. We don't think anything of towing there 75 or 100 miles. So all the timber there is practically tributary to our mill or any other mill on the water. We have paid in 1907 for a few logs as high as $13 for flooring—yes, $15 for flooring, the first of the year, I think it was; $12, merchantable; and $9 for No. 2's. That was the highest. When I speak of buying logs at $6 and $7 I mean that that was what Clark-Nickerson logs—if I say that all logs for five years averaged our company $6.72, that is just what I mean they averaged. It was just that amount. Now, whether these logs were as good as high-priced logs, as some other man's logs, I don't know. I know about my own, or our own. I know that is what they cost us. I imagine I am a pretty good log buyer. I think I am a good trader. I have no special pull on the log business. We buy right in the open market all the time. I have not averaged our profits per thousand feet for the years we have been in business. I do not know what our profit was in 1907. I read it here yesterday. I can read it again. I could not tell you our profit per thousand, nor exactly our selling price. I know the mill cost, just about. I know what our logs cost, I know about what the selling price is. I should think our rail lumber had averaged us about $13 a thousand. I couldn't tell exactly, but I should think that is about what it has averaged. That is our rail rate, all grades, the high and the low. I could not tell you what proportion of uppers and what proportion of lowers compose our rail trade. I could give you an idea approximately. I should think our rail trade would probably average about forty per cent., uppers. I should think so, but I couldn't tell you that, and about sixty per cent., lowers; and for the whole thing we got an average selling price, I think, of about $13.

I think we ship about 30,000,000 feet by rail, and I think about 15,000,000 by water. That would make about 45,000,000. The cargo prices are not nearly so much as the rail prices. I made a contract with Nelson in San Francisco for ten million feet. That is common lumber, No. 1 common and No. 2 common. The common price was $10 for No. 1 common, and $9 for No. 2 common. I made that contract about two months or more ago. Those prices are on our dock at Everett. I don't know what it costs to put it on the vessel. We never loaded any vessels, but I know what they tell me they pay. I know they are paying as high as one dollar a thousand. All

I know about it is what they tell me. They claim it costs them to load onto the vessel all the way from seventy cents to one dollar a thousand. It costs us $3.75 on the cars. We do not keep the accounts of the cost of actual loading on the cars separated. Two men will load about a car a day and the wages are about $4.50. We do not sell to the export trade, and I do not know the export branches.

In seven years our profits are just exactly what I read over here yesterday. I paid this $400,000 carried on account of capital out of these profits. I paid the money back out of our profits. We paid to our stockholders the amount they paid in originally, and we paid a dividend of six per cent. in adition to that all the time. What we have made is the original capital stock and what we have on hand now, whatever it is worth. Whatever our property is worth there today is our profits, that is it exactly. It is hard to tell the value of the thirteen million feet in our yards now, or what it is worth. No man can tell what it is worth. There is not a market for it at the present time. It would be a very unreasonable thing to suggest that it may not be worth the cost of production. We have distributed all the profits we thought we were making from year to year. We have carried no undivided profit account, no surplus, no depreciation fund. We haven't come to a lean year or a panic, and have made no provision for a hard-time surplus. We don't owe a cent. We don't owe anybody anything; and should we want some money it would be a very easy thing for us to go up to the banks and get it. We can get it from most any of the banks if we should want some. I don't suppose right today we could borrow any money in those banks, or the last thirty days, I don't suppose we could. We don't have to. We have made no provision against bad times at all, and if these times come, we have either to borrow money or go down; that is, if we were not making any money, that would be it exactly.

I own one share of stock worth ten dollars in that mill. The Robbins' estate owns stock in the mill. Their estate owns fifty-one per cent., $51,000. I do not know that in the summer of 1906, at the instance of Mr. Robbins, the books and accounts of our company were examined by an expert, or that following that examination Mr. Robbins was dissatisfied and offered the mill for sale, but I will tell you right here what I did do—not later than three months ago. I tried to buy Mr. Robbins' interest, and he asked me $375,000 for his $51,000 which had been paid back to him, and he didn't have a dollar in it on earth. He asked me $375,000 for it. He did

finally come down to $350,000, the lowest he would sell it for. I could raise some money, I think. I have not got the money myself. I do not know that he offered that to Mr. Griggs for sale. I never knew he offered it to anybody. It is a surprise to me. That $300,000 was borrowed at different times from different parties. It was borrowed in Minneapolis. It was borrowed in St. Paul, that is, there was a party lives in St. Paul—D. M. Robbins, a part of it, and part of it was borrowed from our president, M. J. Clark, who resides in Grand Rapids, Michigan. The balance of it was borrowed from the banks. Those parties that I speak of, Mr. Robbins and Mr. Clark, are wealthy men, and they were very anxious to loan us money, always. They wanted their six per cent.

We have not always had all the cars we wanted. We have not had nearly all the cars we wanted. We could have done quite a good deal better if we had had cars. I wouldn't do any cargo business if I could get cars. It would mean about fifteen million a year. I wouldn't do any cargo business, because we haven't got deep water, and we can't do an export business; and the California business is mighty unsatisfactory business.

Mr. Robbins' father was the original stockholder in our company. He was not a director of the Great Northern Railway that I ever knew of. I couldn't say that, but I don't think it. I never knew that he had a dollar of stock in the Great Northern, but I don't know about that.

We are not receiving orders for rail trade. I have just explained to you that we haven't got water enough. We are on tide flats there. We haven't got the water to do an export business. I don't want to be understood as saying that in our business we could easily absorb this advance and go into the eastern markets and meet this rate and sell all the lumber we could furnish. I do not say that. I say no to the question, whether the manufacturers can absorb this charge, or whether we can absorb it. The manufacturer alone cannot absorb this $2.50 advance, there is no question about that, but the lumbermen as a whole can absorb in my judgment, this $2.50 advance. The manufacturer of lumber is not the entire lumber business. There is the timber man, the logger and the line yardman in the east, who all have a handsome profit out of the lumber business today, and have had since I resided on the coast. I have had talks with the loggers in regard to this. I say to the logger: "If this increased rate should stand, you will have to stand one-third of this, 83-1/3 cents

per thousand. The manufacturer can stand 83-1/3 cents per thousand. The line yardman can stand 83-1/3 cents per thousand." I claim that the lumber business, as a whole, can stand this increased rate of $2.50 a thousand, but not the manufacturer alone.

We have no timber to speak of and we own no logs. I propose to be fair with them and help them to carry it. I will say: "John, let us divide this thing up." The way I look at it, there are three branches in this lumber business. The timberman and logger I call one; the manufacturer two; the lineman three. Let us divide it up. Let us be fair between man and man. That will adjust itself in my judgment.

I think Mr. Hill is one of the brightest men in this country. He has been a friend of mine for many years. I have always been very proud of Mr. Hill. I don't know that he was any warmer advocate of mine when I was in politics, any more so than a majority of the people. I was never defeated. I was in it fifteen years, and never was defeated. I always had a majority, and that was all I cared for. I don't know that I had the railroad interest back of me any more than any other interest. I don't know what I ran behind McKinley on my ticket out there, but I ran away behind him, there is no doubt about that, but I was elected.

The reason I came three thousand miles to testify was, I thought I would come down here with the balance of the lumbermen. There are a good many lumbermen here. They are interested in preventing this advance. I don't want to be understood as being interested in giving anything away—any good thing; oh, no, but if I am on the stand here under oath, I am going to tell the truth; but I don't want to be understood as being anxious to give the railroads one cent that I don't have to. The reason why my testimony was not taken out on Puget Sound instead of here was because I saw fit to come here.

The price of shingles the last year varied. The shingle market varies, the same as lumber. The year 1907, it was about $2.35 a thousand, I guess. I don't know. I wasn't in the business only about two months or two months and a half, and they averaged more than that while we were in the business. Shingles were very high, you know, this fall. It costs us to take the log in the water and load it onto the car, load the shingles into the car, insurance, taxes and all expense, you understand, everything, about seventy cents. The price of the logs varies just the same as the price of shingles varies. I said we paid all the way from $11 as high as $18.

An $18 log means $1.80 a thousand for the material that goes into the thousand shingles. $11 a thousand would be $1.10. They did not average $16 a thousand. I do not know what our logs cost us that went into the shingles. I testified yesterday that we could absorb that 16-cent rate on shingles. I know what our profits were. I said that our profits were about one hundred per cent. The reason I shut down our mill after operating two months was because the bottom fell right out of the market. With the bottom out of the market we don't run then, we close down. That is the reason we closed down. We don't have to run a shingle mill. The time will come when we can run it. We bought our logs at the market price of from $11 to $18 a thousand. It cost us seventy cents to manufacture our shingles. There was not a declining market during the two months we ran. Two months after that the bottom dropped out of the market, and yet I know we made one hundred per cent., there isn't any question about it. I haven't got the figures here. I could get them for you in time. I would have to go home, I could not wire to my office, I could not do that. I base my statement that we made about one hundred per cent. from the prices that we paid for logs. Our logs probably averaged us somewhere about $14 a thousand; it was about that. That was in 1907. We bought a very good grade of logs for manufacturing shingles in the market from different parties. We bought some of the Snohomish Logging Company, and we paid them $16 for some and paid them $18. They are the parties we paid $18 for one saw. We bought some from the Lumber Company. I do not know how much, nor what we bought. We bought some from parties down in the south. I couldn't tell you what their names are. I couldn't tell you the month we bought from the last named company, I do not remember.

In 1900 we built an entirely new mill. We built the best mill we knew how to build. Everett is on tidewater and has the Great Northern, the Canadian Pacific and the Northern Pacific railways there. It is a growing, thrifty city. We have not enjoyed a very large local trade. We have not catered to that trade at all. We sell our refuse to a wood man there in Everett. We have disposed of considerable lumber locally. We don't get any more for that there than we do when it is put onto a car, and we have to haul it up-town. We have a very small local trade.

Our capital stock is $100,000, and in addition to that we borrowed about $300,000. We borrowed that money to build the

balance of our mill and to run our business. We borrowed the money and paid interest on it. Certainly we put it into the business, we helped to build our mill with it. The plant does not really represent $400,000. We had $100,000 capital stock, but we used the other $300,000 in the business. We borrowed it and paid it off, paid it out of the profits.

I do not know what the average price of our fir logs was for 1907. I could not give an approximate price. We have not reckoned up this year's business. We don't know anything about this year's business yet. We sold about ten million feet here about two months ago, at $9 and $10. That would make an average price of about $9.50. I don't know what our average price of logs is. I won't know until the end of the year. I wouldn't say until the end of the year. I state that the average price of our fir logs in 1906 was $7.78. They are higher in 1907. Our average price of manufacture is about the same in 1907. As I stated yesterday, we are getting a little more, but wages are higher and material is higher; but it is about the same. If our logs were as high in 1907 as $7.78 and our cost for manufacture was $3.75, that would make $11.53 for our logs and manufacture. If the average price of this ten million feet was $9.50 that would leave a deficit of $2.03, if it was all common lumber we are selling in San Francisco. There is a loss on that particular lumber, but while we are sawing that we are sawing a great lot of uppers, and we are piling it up in the shed at the present time. We are not losing money today on the whole, but we are actually losing money on that San Francisco ten million feet of common lumber that we sold. I don't know what the loss is. We are losing money. We have got to make our profits out of the upper grades, and those upper grades go by rail into the territory affected by this rate. If the rate would not admit of it going into that territory, it would be thrown back into the San Francisco territory, but we can send it there. We can send those upper grades there under the advanced rate, and I think we would come out whole on it.

Our mill has not run pretty steadily. We have closed down a great deal. When things are hard, we curtail. Our capacity now is about 175,000 a day. I don't know whether we put our rating into the Great Northern and the other railroads there at 200,000 a day in the distribution of cars. I know we wanted to get cars awful bad. I think, though, our rating is in at 175,000. I don't believe it was 200,000. No man could make me believe that I made a statement of that

kind. I don't believe I told them that, but I wouldn't swear that I didn't. Our annual cut is about 45,000,000 feet a year, and that would make for the seven years about 315,000,000. I have not figured what the profit would be on that. I have never figured that out to see what the profit per thousand feet is. $1.81 per thousand would not be right, because there has not been any profit in the cargo end of it. You don't figure right. We are shipping about thirty million feet a year by rail. We are making our profits by our rail shipments. This fifteen million we ship by water, we are not making any profit on. Sometimes we make a little. Our profits are so much a year out of our business. I would not call $1.81 a thousand an abnormally large profit, but our rail profit, you know, is a great deal larger, a great deal more than $1.81. We are making no profit on the cargo end of it. This rating to the railroad is given for our distribution, to get cars for our mills. I don't believe I ever stated to the railroad that our rating should be 200,000 a day, but I wouldn't swear that I did not. I think I told them it was about 175,000, because there is no object in telling it different. We have not fared well out there with cars, we have not had all the cars we wanted.

I think I am pretty familiar with the conditions generally over the northwest, around Puget Sound, and on the Great Northern. Possibly the mills located at Everett, a competitive point with the Great Northern, and the Northern Pacific, fared generally better than the all-rail mills out on the line. I know the mills at Skykomish and Goldsboro and the Wallace Lumber Company. I do not know that we have fared better for cars than they have. I do not know what cars they have had. We have closed down our mill lots of times. I do not think we have closed down on account of car shortage. We always pile our lumber up, rather than close down. We cut it and pile it up. We have only thirteen million feet on hand today. We don't intend to carry over five million feet of lumber. This was a month ago. That was all a month ago that we took account of that stock. We are selling lumber—there is lots of lumber, in my judgment, being sold at $3 off the list. I don't know what 8 by 16 stringers are worth. I could not tell you. We have not been cutting any. I could not tell you what ties are worth, because we have not been cutting any. We have not been cutting any timbers lately. I don't think there is much of any sale for any lumber there at the present time. I don't think so, but there are a part of the mills around Everett running, and part of them are not.

I don't know about the rail mills on the line of the Great Northern.

The Clark-Hartley Company owns the shingle mill that I spoke about, with a capacity of 600,000. I still have my interest in it. It is capitalized at $30,000. It has not been recently offered on the market for sale, and is not for sale. It is shut down at present. There is no market for shingles now. I have heard there have been some shingles sold there as low as $1.60, but then I don't think there have been many sold. That is somewhere about the cost of production. The property on hand at the present time is our plant and these thirteen million feet of lumber, and in addition we have some real estate there. We have got a little timber that belongs to the company. We have one section of timber upon the Great Northern Railroad above Index, that we sold a year ago this fall for a small amount down and the rest to be paid for along at six per cent. interest. We sold that for $50,000. That was a part of the original purchase. We made a profit on that, but we have not received the pay for it. That does not enter into these profits that I have spoken of. We have never inventoried our timber land for a cent above its cost. Then we have another quarter section of land, north of Index. That cost $1,200, and it is charged up at $1,200, no profits.

We think we have a mighty good plant. We think we have a splendid plant, and we are pretty well satisfied with our management. We can dispose of our waste. Everett is not very large. There are a good many mills there. I don't know whether we get any more cars than the others, I could not tell. I don't think we get any more than our proportion of cars. I don't know what cars they get up at Index or Skykomish. As far as I have seen, from going by on the train, they don't appear to have very much lumber on hand. I do not know how much of the time they have been running. We have shingles on hand at the present time. I could not tell you what they are worth a thousand. There is hardly any sale for them. They are worth something, of course. We probably might sell them at cost.

I said that the cost for cedar logs probably was about $14, so the timber for a thousand shingles would be $1.40, and seventy cents for loading them into the cars, would be $2.10. I am assuming that you always cut ten thousand out of a thousand feet of cedar timber, as we always do.

I think I told you that we averaged about fifteen million feet a year to San Francisco. Our average was not greater

in 1906 at San Francisco. The rail trade was mighty good that year. We were troubled with a shortage of cars, that is the reason we shipped fifteen million to California. I think the Frisco price was better in 1906, I don't know how much better. I should think probably it might possibly be a couple of dollars a thousand more. We did not ship more than that fifteen million to San Francisco in 1906, because the demand in the east was very good in 1906. We have not made any money in other years on our Frisco shipments. We did not make $60,000 more in 1906 on our Frisco shipments than in other years. I say that possibly lumber was two dollars a thousand more than other years. It was not with us over four dollars a thousand more. We often sell lumber down there at San Francisco at a loss. As I have acknowledged here, we are selling at a loss now. We cut fir, spruce and hemlock, but principally fir. We cut it into all kinds of lumber. If we have orders for long timbers, we cut it, but not otherwise. Sometimes we have a special order for some long timber. We have sold our rail lumber principally in the Dakotas and Minnesota. It has been all kinds, boards, dimension, flooring, ship lap, ceiling, finished lumber, stepping, and all kinds of lumber that you can think of. When we get into Minnesota, of course we meet the Minnesota market. We do not go south very much. We cut this order of ten million feet for San Francisco. That order was dimension, also one and two and three-inch boards and timbers; practically whatever they want. We cut that order from merchantable logs principally, but of course you have to buy some flooring logs. If you were buying a tow of logs from a man and he had some flooring in it, you would have to take it; you have to take it as it is, and some is flooring and some is merchantable, and there is a portion of it, of course, number twos. At the present time they cut up until they get—they are cutting pretty well up into the knots, into the limbs now, and then they stop. They cannot go too far into the large limbs, but they are commencing to stretch it some. They are commencing to cut it very close. If that tree were in Minnesota you would cut more of it into lumber. We are not cutting as close as they are in Minnesota. We make laths and sell them principally in California.

Re-direct Examination.

The stockholders put up $100,000 and we borrowed $300,000. That was all paid back about a year and a half ago. No, I

will take that back; the principal was not paid back until this year. We have paid the stockholders just a little more, but it is practically even. We paid them a little more than their capital stock back. This $300,000 that was loaned was paid for during the year 1906. That didn't run $300,000 up to that time; we had been paying it off as we could; but we paid off the last of it during 1906.

J. POULSEN (Page 1336) testified for the defendants:

My business is lumber manufacturing at Portland, Oregon. I have been engaged in the lumber business nearly forty-two and a half years; in Portland a little over thirty-one years. I am connected with the Inman-Poulsen Lumber Company, a corporation. The capital stock is $600,000. We originally put in $75,000, but we had to buy off part of this, so actually $60,000 was what was put in seventeen and a half years ago. The rest of our capital has come from profits in our business. That is simply the capital stock as it now stands. The mill plant itself is worth $300,000; the real estate is probably worth half a million dollars. The real estate cost very much less than that. We have been operating all the time in the City of Portland, and the growth of the city has added to the value of the real estate. I do not mean that we put $500,000 in real estate. In 1906 we cut 146,000,000 feet of lumber mostly circular saw. We have a couple of band re-saws. No mill has ever cut that much, so far as I know, anywhere. Before I went to Portland I was engaged in the lumber business at Lyons, Iowa, along the Mississippi river, and in Europe before that. We have been running pretty steadily during the last five years. For eight years we ran night and day, until last year we had a strike. Forty per cent. of our men went out on a strike and they have been out on strike ever since. We then shut down the night shift, and have run day time only since then. Until last spring we ran day and night for eight years. Mr. R. T. Inman; George Ray; J. Hatfield estate; George Fletcher and Henry Van Duzer are in the business, besides myself. I run the business, Mr. Inman looks after the mill. He is decidedly a practical sawmill man. I think he has been in the sawmill business thirty-five years. All of that time along the Columbia river. By practical sawmill man, I mean that he learned his trade in the saw mill, before he went into the manufacturing business. I know he was a screw-turner. That is the fellow that turns the screw

that sets the log. That is something that is done away with in the mill now. He had not even reached the dignity of a sawyer when he came to Portland. Five years ago our capital was about $320,000. For one year there was not much profit, but we made in the five years a million dollars, or a little over; that is during the last five years. In 1904, we did not make much that year. We made $45,000 that year. Our lumber goes all over the world. For the last month, half of our lumber has gone by rail. I cannot say for the last five years. I am not much of a hand at estimating or figures; I only go by general results. We have had as much rail shipment as anybody in Portland, I think, for the last five years on an average. That may not be right; I do not know. The Eastern & Western Lumber Company, in Portland, are as good competitors as any we have. I don't pay attention to anybody else's business, but I think they have shipped more cars in proportion than we have. I think they have stood in with the railroad companies in the matter of orders better than we have. I think that because I have been pestered with small little items, like demurrage and overcharges, and have kind of soured on them. I haven't been on the best of terms with your people. I could not say for certain how much of our rail shipment goes into the territory affected by this change in rates, but I do not think to exceed over ten per cent. I don't think all Portland shipments exceed over ten per cent. of the total. That is only a guess, however; I have no statistics in regard to it.

Our cost of production in 1907 was on an average $12.50. That is our cost to produce the lumber and put it on the cars. It is the total expense for logs, for taxes and insurance, and everything else included. We cannot equal the cost of $10.90, stated by Mr. Dickson as the cost of producing lumber by the Booth-Kelly Lumber Company mill. Their logs are much cheaper than ours. The average cost of our logs has been $10 for the last year, or very close to it. It does not vary over fifteen cents from that price. Two years ago we paid $6 for the same logs that a year later we paid $12 for. When the price of logs two years ago was $6, the loggers told me that they were doing very well at those figures. Our average selling price during the last year was $4 higher than the cost. That would be $16.50. That is up to the 1st of November. We did not make $4 last year on 146,000,000 feet of lumber, because there were five raises of a dollar each in the price of logs, and every time logs raised we had thirty million feet

of orders on hand that had to be sold at the old prices—and new prices for logs. That took off $180,000 profits, and if we had not had the orders we would still have shipped the same amount of lumber. We practically lost, as a result of our contract business, what it cost us by reason of the five raises in the price of logs. I should have said six raises. There were only five, but there is another thing to explain. While logs only went up on the face of it $5, yet the loggers insisted on getting a better scale, and they did get a better scale on logs. Our lumber cuts about two per cent. first clear; ten per cent. second clear; eight per cent. third clear; seventy-two per cent. common; eight per cent culls. That is for this year. I think a year ago there was two per cent. less cull, or two years ago, rather, two per cent. less cull and two per cent. more common. We get our logs from along the Columbia river, all the way from Astoria, up. We own a little timber ourselves; I don't know how many acres we have; we have about three million feet. We buy most of our logs in the open market, along the Columbia river market. There are loggers engaged in contracting and delivering logs into the Columbia river. We tow the logs ourselves, that is, we hire them towed; we do not own our own tow-boats; we hire the boats in the open market. Our average selling price for last year was $16.50. I do not remember the different prices.

Poulsen Exhibit No. 1 offered in evidence, page 1349, identified by the witness as price-list, dated October 20, 1906. Continuing, the witness testified:

This is our price-list of October 20, 1906, but this would result in a larger selling price. There has been a whole lot of old orders taken at lower rates that come in with this. That list would probably show a profit of something like $5 instead of $4 on old orders. I make up this list. We sold strictly according to that list from the time it was printed up to the middle of the summer, somewhere in July, all with the exception of San Francisco. We gave San Francisco a rebate. That was owing to the conditions at San Francisco. We were selling common for $15 at that time. Basing on common, when common sold at $15, we sold other grades of lumber at the prices shown by that list. There was another exception, however. In selling export cargoes, we do not go by the list. I look at every schedule and make a price, but that is supposed to be in line with this. We do not intend to sell any lower or any higher. We make our own list prices. We are not a member of the Oregon & Washington Manu-

facturers' Association. I heard Mr. Buehner's prices as to the various ups and downs of the market, as shown by his chart and the prices of logs and lumber. As far as logs are concerned, that chart is undoubtedly correct. Their lumber prices are probably somewhat different from ours, but I do not think they are very materially different. I think our prices would swing along about in line with theirs, as shown from time to time, although I do not know. I never paid any attention to their list or what they do. The conditions are such that it would be most probable. We do not get away very much in price from our surrounding business competitors, we cannot. I heard his testimony about the fluctuations in the market. That was about correct as shown by that chart, as I listened to it. I have looked it over. When we make $4 profit, when we sell common for $15, we get proportionately more for the higher grades. We get a proportionately larger price for large dimensions. But there is another way of putting it. If we did not cut any clear at all, we could still sell common and make $4, I think. I have not figured it out exactly, but I think we could. The logs cost less. I cannot tell how it is that we manage to get $15 for common when Mr. Clough is selling his for $9.10. That is what we are getting. We sell our common all over the world, Portland and San Francisco. San Francisco is an exception. I said we gave them a discount, but that is not because we had to. Our common lumber consists of all kinds of boards, scantling timbers, and so forth. There is a well defined grade of lumber called common lumber—well, I don't know how well defined it is; it is what is not clear and what is not cull. There is a grade of lumber in the trade in Portland known as common lumber. In San Francisco they make two grades out of the same thing and call it No. 1 and No. 2 common, but we do not do that. We have shipped our lumber to Dresden, Germany; we have shipped it to South Africa, China and South America. For the last year probably about one-quarter of our total output was exported. That means, however, the beginning of this year, not lately. Lately we have sold very little; and the last six months we have sold very little export. We are receiving some orders now from Colorado and San Francisco.

As near as I can make out, about ten per cent. of our rail lumber goes into the region affected by this advance in rates. Our principal rail market is Utah. I believe we get a better rate into Utah than the Washington mills, though I don't know.

Our rate is forty cents, their rate is forty-five cents, and our rate continues forty cents to Utah. Since I left I don't know how it is, but we were still selling lumber in Utah clear to the day I did leave. I think our sales in Utah for the last four months, where the rate has remained the same, have been pretty nearly the same as they were for the corresponding four months last year. I think we shipped in as many cars as we could get. Yes, I think as many this year as last year. Last year we had a car shortage, and this year too, for the last four months. I do not think there is any car shortage now. Business has fallen off since this slump. There has been a falling off in the business in Utah, too, all over, as far as I can see. Up to the time I left Portland two weeks ago, we had been selling substantially as much in Utah for the last three or four months. About the middle of January I noticed that there was a slacking up of orders. I first perceived it then perhaps very slightly. Since then business has been going down, that is, orders have been becoming scarcer all the time. About the middle of July we reduced the price of lumber, and we have reduced it twice since then. The only reduction that was made in the middle of July was on a contract for ties that I took from the O. R. & N. Railroad Company. We were at that time selling ties for $15, and Mr. Coler, the purchasing agent, asked me why I didn't send them faster, and I told him I didn't care very much to bother with the business, that it didn't pay us. We had no particular orders on that business. I said, "If you want any ties, put in an order, so we will know what we will have to do." He said that prices were too high, and I told him that we could make them lower if he wanted them, and finally we agreed to sell him a million ties a month for six months at three dollars less than we were selling them for then. We were getting $15 and we are getting $12 for those on this order that I speak of. We had not taken any contract for ties before that in 1906. In 1905 we took an order from Mr. Rhodes for some ties at $7.50. That order has not been filled yet, because he did not furnish the cars, and I told him as long as he did not furnish the cars we would wait until prices came down some, before we shipped the ties, or the rest of the ties. I mean to say that we are delivering the same thing to him for $7.50 which we are delivering to the O. R. & N. Railroad now for $12, and before that we getting $15 for. That contract was entered into in the fall of 1905. It was for four million feet originally. There are about two million feet left on it. I

did not entirely decline to fill that contract during 1906 or 1907. We shipped him a few last summer, when we were shipping to the O. R. & N. Railroad at $15, we were shipping some to the Southern Pacific at $7.50, but cars got short again, and besides we did not try to fill them very fast. Before that contract in July with the O. R. & N., we had not had any contract with the O. R. & N. The reason I made that contract was I knew what was coming, and I thought I would get ahead of old man Coler. He is a German and I am a Dane, and we have been playing each other a little. I sold him ties at $12 for common lumber. He thought he was making a fine contract. The contract was to last for six months, a million feet a month. The price of common lumber now is $11; boards $1.12. When we say common lumber that means scantling, timber and so forth; boards are a dollar higher. Everything has been reduced in proportion. We have reduced lumber since this reduction in July; there have been two or three reductions; I don't know how many there have been, but we are down to $11 now; and we were $15 before. We are paying the same price for logs. We had a contract running the last year. The contract I refer to is out this month. We are paying, I think, a dollar less for logs than before. We have paid $8 and $10 for the logs. That means $8.50 and $10.50 at the mill. The logs this year have averaged us $10.50 at the mill. There are two grades; there are more than that, but we have only had those two grades this year. $4 is the highest that it has cost us to manufacture lumber at the mill, aside from the cost of logs. It cost us $3 two years ago, but we have a great deal of retail trade where the expense runs up much higher on the average, car loading or export shipments. If Mr. Clough had his business it would not cost him over three and six bits.

I want to say in explanation of this price-list, this: When I say the price of common lumber is $15, this first item is boards. That is sixteen, but that is not what we consider the base price. The second item here, taking in all lumber, from 2 by 4 up to 13 by 14, up to that long, that is our base price, and that is $15. I say the item which stands there at $15 is today $11, and boards are standing there at $16 and are today $12, although in the meantime logs have only dropped a dollar a thousand.

In the first place, the raise in the price of logs started in the fall of 1905. The papers stated that the railroads were going to make big improveemnts, and they all commenced to

buy lumber. Then in the spring of 1906 the San Francisco fire and earthquake came along, and everybody wanted lumber in San Francisco as fast as they could get it. It was the increased demand for logs which advanced the price. When the demand falls off, then the price will go down somewhat. Our logs come from along the Columbia river. The ownership of that timber is fairly well scattered. There are a number of loggers engaged in the business along the Columbia river. Immediately after the San Francisco earthquake and fire there were three or four or five raises in the price of lumber, I don't know how many. Every time the loggers had a meeting—I think they held monthly meetings, although I do not know how often, but every time they had a meeting they concluded they ought to have a dollar more for logs. Then we had to raise the price of lumber, and it went on that way until the rise in the price of logs was from $6 to $11. In fact, the price went up to $12, because they also wanted a better price than the scale. That rise ocurred in the summer season and it was all owing to the excessive demand caused by the San Francisco earthquake. The railroad companies did not raise their prices on the transportation then, not until now, that I know of. There are loggers' associations. I am not on the inside, and so I cannot say whether all the loggers are in one association, but I ran up against them, I ran into their meeting, and they were all there, as near as I could see.

We do not own or operate lumber schooners The concern does not own any, but the individuals have interests in three lumber schooners—not all the individuals; I have no interest myself in any of them; my children have. We do not operate the schooners in connection with our mill. Mr. Loop, in San Francisco, operates them. Mr. Loop controls them, but we have what you might call a close standing with Mr. Loop. Their capacity is in the neighborhood of 800,000 apiece, but they are not exactly the same size; that is 800,000 apiece for each cargo; they carry a million and a half a month each, to whatever port we want to send them. They go to San Francisco mostly. We can load some 750,000 to 850,000 feet on each ship. That is somewhere near it.

Question. Mr Cotton. Now, Mr. Poulsen, the question has sometimes been asked these gentlemen as to whether they can stand a raise of from $2 to $3 per thousand feet of lumber. What about that?

Answer. Mr. Poulsen: All I can speak for is Portland. Portland probably ships into that territory ten per cent. of its cut; at a rate of $2.70, which Mr. Buehner put it, I think that

would be the average; I think that would be 27 cents on the total cost. If that was divided into three parts, as Mr. Clough wants it to be, the logger would have to stand nine cents, the manufacturer would have to stand nine cents, and the yardman would have to stand nine cents a thousand.

From the fall of 1905 up to within a couple of months ago logs had practically doubled in price—no, that is not quite right. No, they doubled in price from the fall of 1905 up until the fall of 1906, and they stayed up until we had a strike that spring when they came down. But we were not affected by the highest price of logs, because we had contracts ahead, so we did not have to pay the highest prices for logs. We got caught on some things, and then again we may gain sometimes. The logs we paid $6 for one year, we paid $12 for the other year. This $12 rise continued, I think, from the first of January for about two months—for about three months, January, February and March. But we had a provision with our loggers that they should give us notice, and for that reason it did not take effect with us as soon as it did with others.

We have overrun in our mil. The average is from 18 to 20 per cent., but last year it was not near as high as that, because loggers insisted on having a big scale, they wanted a scale for the rot, and everything else.

I don't think we could cut more lumber out of the tree. I think they cut them as close as the Columbia river. I don't know about the logging, though; I would not say. We are cutting very close now; we do not leave anything in the woods that will make lumber. We sold this knotty stuff and the tops to you for ties. We get $12 for No. 1 ties, and we get $6 for cull ties. It does not make any difference what you sell your refuse for, so that your total receipts are correct. It is only the total that counts. It does not make any difference. You can give some of it away. I have seen times when we shipped logs to San Francisco, and did not get a cent for them. We expected to get paid for them to be sure, but we did not, and still we did not lose any money. The average proposition of the disposition of the entire product is all that counts.

Cross-Examination.

Our mill is situated on the east side of the Willamette river. It is not in the heart of the city. It is at the tail end of it. We have made water facilities. We did not have them

originally. We have done some dredging. We have water facilities, and vessels go right alongside of our docks, and our dock is a part of our mill plant. We can practically run our material that we sell for export or for San Francisco, practically from the saw mill right into the vessel, and we do that. We handle it as economically as we know how.

In addition to that we have the Southern Pacific tracks there, also the O. R. & N., and they switch cars right in there, but if it was a Northern Pacific car we have got to pay $15 a car. We don't pay for switching, only the Northern Pacific. By paying the switching we can get Northern Pacific cars.

In the last two or three years there has been in Portland a very large demand locally for lumber. We have not shipped out more locally than we used to in the last eight or ten years, I don't think. There has been a fair local demand during the last six or seven years in Portland. There have been a great many buildings erected in Portland for the last two years. We sell our refuse in and around Portland. Our waste is extremely limited. We claim that our mill is one of the best situated and best operated mills in our section of the country, although the Eastern and Western are probably just as well located. The way we are situated in sawing our lumber, we saw a great deal of random lengths, and to some extent that saves us cost in operation over a mill that is sawing for particular orders; it saves some cost.

The fact that we are situated there in that way with regard to water is in that respect a marked advantage over an all-rail mill, but the all-rail mill that is in the woods gets its logs for about three or four dollars less than we do, or if they do not they do not manage right. We get rid of our stuff better but it costs us more to make it.

Up to last spring we ran night and day, for five years. We were cutting the largest amount of lumber during the last three or four years of any mill in the world. In 1906 our cut was 146,000,000 feet. I think in 1905 it was 131,000,000; in 1904, 122 million; in 1903, 118,000,000, or something like that. I don't remember in 1902. These may not be exactly right. It was only last year and this year that I could tell you exactly. I think it was close to 1902 that we made a change in our mill. Whether it was the year before I do not know. They jumped from 84,000,000 to over 100,000,000, but I don't know whether that was the year or not; 100,000,000 for 1902 would not be so very far from it. It is not far enough from it to make any difference. 146,000,000 feet is probably right for 1906. I said we made $500,000 in the last five years.

We were to cut 77,000,000 feet at the end of this year. Of course I have got to guess at this month. A mill might burn down and they might not come out right; but otherwise they will come out right as nearly as need be. Mind you, I do not claim to know within a few hundred thousand feet.

I was summoned here as a witness. I did not bring any figures with me. This year we will say 77,000,000; 80,000,000 feet is near enough right. 600,000,000 is practically what we have cut since 1902. I do not think quite that, I think it is will lack about 8,000,000 feet of 600,000,000 feet. I did not say in that time we had made $500,000. I said a million dollars. We made a million dollars on six hundred million feet of lumber. You can figure up the average profit per thousand yourself, something like $1.80. That is near enough right. When I spoke about $4.00 profit I did not mean that has been our average profit for a series of years. This year we have tried to get all we could. Before that we were kind of running to a great extent for sport. There was another mill that was in commission at that time and they cut so much lumber, and my friend, Mr. Inman, wanted to put them —(interrupting)—at any rate, taking a period of five years our average profit on lumber has been about $1.80 a thousand.

We had a strike in our mill this spring. Our men said at the Union meeting that they had no grievances whatever. They never told us they wanted anything. I don't know what they wanted. They did not ask us for 25 cents advance. They never asked us anything. I did not appear in the newspapers in a statement that the saw mills could not afford to pay 25 cents more. I never said anything of that sort. The question came up when the lumber men met whether we should give them the advance, and I said, "No, gentlemen, not now. I have had before this to reduce wages, and that is the worst thing in the world that I can do. There is something in the air now that I do not like; the next change in wages, I am afraid will be down." That is what I stated, and that is the reason I did not want to give that advance at that time, because I was reasonably certain that we had passed the summit and were slipping down hill.

If the mill men of Portland in fighting this strike stated publicly as their side of the issue, that on the profits they were making they could not pay 25 cents more for labor, they lied. I never heard such a statement and I certainly did not make it. I told you why I did not pay any advance. We did

not pay it. I was not looking for a cut, I was looking for conditions that would avoid a cut. I did not want to create artificial conditions that could not be upheld. I want you to understand that I am always with the workmen. I am with them today. We have not reduced wages and we are not going to if we can help ourselves.

I do not belong to any lumber association of any kind. There was a strike some years ago and after that we had a kind of retail combination there so as to hold all the members together, so that the weak brethren would not slip away from us. I would not go into the Association for anything. When a strike comes I am all there, yes, sir.

Last year when there was considerable agitation respecting the car shortage in Portland, I did not sympathize a bit with that. I took no part with the mill men in trying to help out that situation. There was no one to help it. The railroad could no more accommodate itself to the business than we could. We could not half supply our orders and the railroads could not help supply cars, and the banks could not supply the money.

Of this lumber that we cut last year I suppose we have on hand in our yard by this time about six million feet, I don't know for certain. January 1, 1906, we had six million six hundred thousand feet. July 1st we had five million ninety-five thousand feet; October 1st we had five million seven hundred and twenty-seven thousand feet; April 1, 1907,—we skipped the 1st of January; there was something happened, I don't know what it was, that we could not take stock right at that time. We had several vessels loading and we got muddled up; at any rate it was not accurate enough for me, so I did not put it down. April 1, 1907, we had four million one hundred and fifteen thousand; July 1, 1907, three million eight hundred and twenty-five thousand; November 1, 1907, five million three hundred thousand, but I think it is about six million feet by this time probably.

We were running night and day in 1906 cutting at the rate of one hundred and forty-seven million feet a year, the largest cut of any mill in the world as far as I know. We did not get nearly all the cars we wanted. I will say that the lumber gets out of the way. You need not worry about that. Our lumber did get out of the way and it will get out of the way now, too. It is not stacking up today. We had the largest concern on the Pacific Coast some years ago, but when they built so many mills, every mill was getting some cars, and did

get them, and we could not get them, so we had to get water outlet, so I simply hunted for other outlets and got them.

There has been trouble enough with car shortage. We have no lumber left on hand because we shipped it elsewhere. We got rid of it and we will get rid of it under any circumstances. Don't you ever believe that our principal purchasers other than our water shipments was the Southern Pacific and the O. R. & N. Company. The O. R. & N. Company will not favor us one particle.

I think I have as many scraps with the railroads as any one I ever saw. I hired an Irishman that had an awful bad gab on him, to just go and worry them.

No, it is not generally known in Portland that I am a very bitter fighter of railroads. I am not a bitter fighter of anyone, but when they come some of their smart games I get back at them as much as I know how. We are not getting along better now; we simply got other outlets. I am not quite as handy as I used to be at gabbing. This man that we hired, that did not fix it up properly. We had lots of fun out of it, though. I was asked to come here by Mr. Miller of the O. R. & N. Company. I told you I thought it was my duty to come. I would not have come across here for any money in Christendom. I would not take this trip over here at this time for anything.

I was not asked to produce for the benefit of the Commission for this hearing a statement showing our lumber shipments for a series of years, the territory they were shipped to and pretty tolerably full information about our business. I have no objection to furnishing to the Commission the same information respecting our shipments, if you should ask for it, that the other mill men, or many of them, have furnished at the request of the railroads, but I am afraid that would be a terribly long job.

You were fighting and I am not fighting. No, I am not fighting you. I am simply stating facts, my dear sir. I do not care what the rates are. They raised us on the rate to San Francisco from four dollars to six or seven dollars. My opinion about this raise in the Colorado rate is that it is ten cents higher than it ought—than it used to be. I don't know anything about rates.

We ship to Colorado, but I don't care what the rates are, that is immaterial. The lumber men are competitors. I have nothing to do with the rate. I have said to what extent the advance of fifty cents in the Colorado territory would affect

us. Out of the $2.70, one-tenth of that is 27 cents a thousand for the total cut. If that is divided up between the logger and the mill man and the other people, we are all out. On the lumber we sold in Colorado last year, we got the same as we got anywhere else, and we will get that forever. I think we could have got most anything last year, in Colorado, or anywhere else, because I was offered from one, to two or three dollars higher than our price, and I refused it, last summer. I declined to take a higher price because we were getting wild. Our price had doubled or nearly doubled within a year, and I know that would result in a break. I considered that the lumbermen were acting like fools. We sold lumber for $1.00 or $2.00 a thousand less than other lumber men, and less than we could get. At the same time we were selling to the Southern Pacific ties for $7.50, but that was on a contract, taken the year before. There was sweetness enough in the other business anyway. I am under oath and I know what I am talking about. I did not say that we were offered a dollar and a half to two dollars more a thousand than what we would sell the same thing for in Colorado. I did not understand the question. I said that there were piles of people coming from the East that were offering us contracts at an advance of a dollar or two, and I said, "Gentlemen, we cannot take it."—not in Colorado. I did not want to get wild, and I did not want all the people there to get wild.

I don't know whether on the lumber we sold last year in Colorado we could have gotten $2.80 more than we sold it for. I have not hunted any business in ten years, I think; no—ten years is too long—in eight years, I think.

I don't know anything about whether we could have gotten more in Colorado than we were selling for. I have been in the business a long time and I am familiar with the lumber business. I think since I have left Portland we have had orders from Colorado points at our regular prices. A 10 per cent. advance to Colorado points will probably stop some of the business. I think it will. I said if the rates in Colorado had been five cents less, I would have thought better of it, yes. I would rather have it ten cents lower. You cannot make the rate any too low for me. Rates do not bother me the least little bit.

I stated that we make two per cent. first clear, ten per cent. second clear, eight per cent. third clear, seventy-two per cent. common, and eight per cent. refuse. The class of lumber that goes foreign from our mill is mostly common, although there is some clear. I think in the case of a rail mill cutting more

largely for the eastern market, their lumber will be cut in smaller dimensions on an average than ours. I always fished for the largest sizes and that decreases the cost and expense.

We ship a little dry kiln lumber in steamers to San Francisco, but not enough to amount to anything. That expense is done away with.

In shipping to the eastern markets by rail, a very large proportion of it is dry kiln, of the higher grades. In loading a car with this high grade lumber much of it is tied in bundles. It is more expensive than running it into the hold of a ship, that is it costs more to load a car with the finer grades of lumber.

Our cost in our situation as compared with the rail mill shipping largely east, handling its product as I have suggested, would naturally be lower as to that part of it, but we have so much retail trade that that would probably bring it up to just as high as the other.

I said I think as far as Portland is concerned, shipments to this affected market were not ten per cent. of the output. I did not go outside of Portland. I know nothing about the rest of them, and I only guessed at Portland, but I heard Mr. Buehner's testimony. I am not simply basing my estimate on Mr. Buehner's testimony; also on my own knowledge. I don't know anything about where the shipments of the Peninsular Lumber Company go. They go east to a large extent. That is a Portland concern. I may be wrong in saying that; I only know my own business, but I have been asked for my opinion.

It would be a terrible job for me to furnish the information that was requested of the other Portland mills, that is for a series of years to show our shipments and what territory they go to, because our books are not kept so that that is at all separate. Our rail shipments are all mixed in together.

Re-direct Examination.

(The witness was here asked by Mr. Cotton, counsel for the O. R. & N. Company, to furnish to the Commission a statement showing all the lumber, and the prices at which sold by the Inman-Poulsen Lumber Company to the O. R. & N. Company, or the Southern Pacific or any other company connected with the Harriman lines during the last three years; also the dates of sale. The same request was asked on page 1402, of Mr. Buehner.

On page 1407 the Commission asked that the Southern Pacific and the O. R. & N. Companies furnish a statement show-

ing from whom they purchased lumber during the last three years and the price paid for it.)

(Continuing the re-direct examination of Mr. Poulsen, he testified:)

I don't think we shipped ten per cent. of our rail shipments into these eastern territories, not that much.

(In response to a question by Mr. Wimbish, the witness testified that their output had been practically 600,000,000 feet in five years. Continuing he testified:)

From that we derived a profit practically of $1,000,000, a little over. That is approximately a profit of $1.67 per 1000 feet, whatever it figures out. I expect it figures out that if we had shipped all our products by rail to eastern markets affected by this advance of $2.80 per 1000 feet we would have paid in freight in that time on that cut, $1,678,000, and instead of making any profit, we would have had a net loss of $678,000; but I don't think that has much to do with the case.

C. I. MILLARD (Record page 1411), testified as follows:

My home is in St. Louis, and I am here under subpoena. I am engaged in the general lumber business. The various companies in which I am interested are engaged in the manufacture and in wholesaling and retailing all kinds of lumber. I have made a study of lumber problems and the movement of lumber. I have been engaged in the lumber business since 1883. Our mills are situated mostly in Louisiana, Arkansas and Mississippi. We have one in operation in Wisconsin. The only wholesale lumber yards, in the sense that material is assembled and distributed, that we have are in Illinois and Indiana; but our general wholesale business is distribution by cars and cargoes from the mills direct. The two wholesale lumber yards are at Mt. Vernon, Illinois, and South Bend, Indiana. I am also engaged in the retail lumber business. We have a number of lumber yards in Iowa, Kansas and Oklahoma, three in Iowa; seven in Oklahoma and about seventy in Kansas. I am interested in twelve or thirteen mills.

We cut nearly all yellow pine. Our approximate output from the several mills is 15,000,000 feet a month. My experience was in the manufacturing of white pine on the Mississippi River. After that our supplies for the retail yards came from Michigan. At Chicago we had a very extensive distributing yard, from which we distributed about 300,000,000 feet a year. Then all the supplies in that western country came by rail from

Minnesota, Michigan, Wisconsin, and from points on the Mississippi river, where the white pine was manufactured into logs that were floated down the river. In about 1886 we commenced to buy yellow pine, and that wood was largely increased, and has been increasing up to the present time. After 1897 we commenced to buy a good deal of lumber on the Pacific Coast, and Arizona and New Mexico, Montana and Idaho. My experience was based upon the fact that I was constantly on the move, visiting these mills, and making contracts.

I have studied the lumber situation as regards other woods which I have named; and have had practical experience in the handling of them. Prior to the year 1896 my handling of lumber was confined nearly all to white pine. The substitutes for white pine which were being forced on the market led to the change by which we began to handle other woods. North, we bought Norway and hemlock as a partial substitute for virgin white pine, and then yellow pine became an increasing factor of greater or less potentiality, as the years increased. I think the maximum production of white pine in the Lake states was reached in 1892—a cut of about eight and one-half million. In 1896 we ceased to handle white pine solely. Between the years 1893 to 1896, white pine ceased to be manufactured to the greatest extent in Michigan, along the Lakes, and the greatest production, the center of production, moved to Minneapolis. Then the extension of what was called the Omaha line from St. Paul to Duluth and Ashland, opened up a great forest there. The Wisconsin Central was built from Milwaukee up to Stevens Point, and it extended on up to Ashland; and the Northwestern also had various lines; and the Milwaukee extended their operations into Chippewa Falls and Eau Claire, so that all the timber which was formerly rafted, either in the round log or sawed, down the Mississippi River as far as St. Louis began to be manufactured at the mills located near the sources of supply.

The factors which led to the substitution of other lumbers for white pine, were the decreasing supply and the inferior quality of the white pine logs, and the opening up of other sources of supply, and competitive features. The new woods were always sold at a sacrifice price. They were forced on the market. There was undue stimulation in many cases. The various lumber conditions, or business conditions, of course were a potential factor, but the main thing always was an effort to sell the substitute for white pine. Cypress and poplar began to be a substitute in the manufacture of sash and door,

and then yellow pine to a more or less degree, and finally the main source of supply for sash and door for stock sizes began to come from the west.

In using the phrase "undue stimulation," the thought I had in that was the ease of reaching the market, which was brought about either by natural or artificial water ways. The logs which originated or grew tributary to the rivers driveable, or which were made so; in Maine and Nova Scotia and in the southern country, the rivers that entered near Savannah and Pensacola and Mobile and the Railroads at those places, and the Beaumont & Orange and Texas were always the centers of log production, where the logs came down more easily. After those supplies were in a measure exhausted, if I recall it rightly; in 1840, I think the census of 1840 showed that there were 6,000 saw mills in operation in the state of New York. Most of the larger mills were at the head waters of the Hudson river. That business was naturally marketed at the mouths of the river, and always at a low price. New York was supplied from the Adirondacks; Philadelphia was supplied from the Delaware river, and Baltimore drew its supply from the Susquehanna river; from Williamsport. The white pine was first cut away, and then after many years hemlock was substituted. By artificial waterways, I have in mind the greatest stimulus was on the Erie Canal. As soon as the timber was exhausted from the natural waterways it began to come from Michigan, at an equally low price; always at a sacrifice of value. Then the rivers in Michigan; the greatest producing section was in the Saginaw basin, until it was in a measure exhausted. Then the pineries at the head of the Muskegon, and the River that comes in at Grand Haven, that was a center of production—Muskegon was the greatest center at that time. It was called the sawdust City. The timber was floated down to those various manufacturing centers, it was carried across to Chicago at a very low price. The railroads made very low rates to carry it beyond to supply the treeless states in the west. After the maximum production was reached at Muskegon, Minneapolis was the next center of production, and the fact that logs and lumber could be floated down the Mississippi River at a very low price also increased the desire to manufacture the logs and lumber near the source of supply. The measure of cost from Chippewa Falls or Stillwater to St. Louis on lumber rafted in cribs did not exceed 2 cents or 2½ cents a hundred pounds for a thousand mile draft down the river. The markets of St. Louis were supplied by northern lumber. St. Louis was built

of white pine, although we had within a few hundred miles of St. Louis large supplies of southern pine, but until the white pine of the north was nearly exhausted the yellow pine did not become a factor. And the same condition now obtains, inasmuch as by means of the low rates which have been made in the past few years the western lumber has become a great factor, and is met in the treeless states—Nebraska and Kansas and the Dakotas—by the southern pine in active competition with the northern products.

My first experience in Detroit was that we could only sell clear yellow pine. To obtain clear yellow pine we had to cut only the good logs; we could not sell any common lumber, or even the select grades at that point, because the lower or cheaper grades were supplied from the lower class of inferior class of logs which remained there after the good lumber had been cut off. For instance, the best class of uppers, that is the best class of logs in the forest that was tributary to Detroit was cut into materials that went to the eastern markets, or cut into material that went to England. That was the good lumber. It had to be clear lumber. So that in ten or fifteen years after that Detroit could depend on its supply of common lumber from its near-by forests, but to obtain high grade material it had to buy from the south, or cypress or poplar, some of the substitutes for white pine, of the grades which were depleted.

If I understand your question correctly, the substitution of white pine in the lower grades by Norway, which was once despised because it was thought inferior, by hemlock, was forced by market conditions. That is you could buy a better and clearer board or timber, freer from knots in Norway at a lower price than you could in white pine. It began to be a factor soon after the home market began to use the lower grades. Before the white pine forests had grown to be so much less in volume as they are now in output, in cutting a white pine log we would get far better grades or far larger percentages of good grade lumber with which other lumbers could compete, because at that time they only cut the best trees or the best logs out of a tree; they did not bring in anything but surface clear logs, that is, cut below the branches.

The percentage of low grade lumber now from white pine logs as compared with the character of lumber that we got from those logs in 1892, is very extraordinarily great. In those days we only had first, second and third class common boards, as we might term them, those being below the clear boards.

Now, they have as high as six grades of common, and mill culls, which were formerly used for the cheapest class of building material and making boxes, have been graded up until, as I say, we have six grades of low grade lumber, and the natural result is that since white pine of the low grade is very desirable for some kinds of manufacturing products, and especially if you are making boxes, and the smallest and most inferior tree is utilized, they bring in all the dead and down timber. That makes necessarily a much poorer grade of lumber, and allows competition of other woods.

I made some figures about the amount of white pine there is standing in the Lake States, by which I mean Michigan, Wisconsin and Minnesota, at one time, and I think I have them available here now, but I do not seem to find them. My recollection is that the last estimate made of Minnesota was made by the Fire Warden, in which he thought it was between twenty-five and thirty billion feet of white pine remaining in the State of Minnesota. In Michigan it don't amount to anything, and in Wisconsin there may be eighteen or twenty million of white pine and Norway.

The most available figures of the yellow pine standing in the South give the total of the short and long leaf varieties of about one hundred and sixty billion. There are about six hundred and fifty billion in Oregon. My estimate for the southern states includes west as well as east of the Mississippi river. It includes the states of Texas, Louisiana, Arkansas and Oklahoma. Texas and Louisiana contain the largest amounts.

The taking of the place of white pine by spruce and hemlock for various manufactures is rendered inevitable by the physical conditions of the two timbers. Spruce in the Adirondacks and in Maine and Nova Scotia and New Brunswick is practically all that is manufactured, and the western part of Pennsylvania supplies all the hemlock. What is to say, in New England and through there, except what is locally produced in Maine and in the Adirondacks.

The Douglas fir and the spruce, that is cal'ed the Noble fir, that is in Washington and Oregon. In California there is the Redwood, the western pine and the sugar pine. In Idaho and Montana there is what is called the Western white pine and the mountain pine, a variety of which is nearly commercial and botanical white pine. In Arizona there is a species of white pine which is very light and a very good substitute for white pine, which is called the Arizona white pine.

My memory of the increase in prices of white pine in the last eight or ten years, that give, for instance, the better class of flooring or ceiling or siding, would be better on the upper grades of white pine; shop lumber and the three upper grades are called uppers. They used to sell on the Chicago market, within my own experience, for $18.00 to $25.00 a thousand. I think that was in 1882 and 1883. Within ten years, I presume, the price has gone from $40 or $45 to $65 on that grade. That is used in sash and door factories and joinery shops, to make trim and patterns. It is used for any purposes for which the Douglas fir is used as a substitute. Spruce makes an excellent substitute for bevelled siding and for factory work.

I do not believe I could state the comparative prices of fir and spruce used for the same purposes at the same time. I said the increase had been from $45 to $65 in white pine uppers. The prices of white pine uppers are about $65 a thousand. My memory is not very accurate on that, but I should say, my recollection is for clear spruce the price is $20 a thousand on the Pacific Coast. I would not be sure about that.

The cash cost of making yellow pine lumber is conceded to be about eight to nine dollars. What I mean by the cash cost is the expenditure for wages and labor. The logging is from two and a half to four dollars, including the logging chance. What I mean is, if the timber stands thick on the ground it is very much cheaper than when it is thin. When it is thin you have more miles of railroad to build and have a longer haul. Those prices do not include the cost of depreciation or renewals, except in a minor degree, or the cost of insurance or taxes.

The price on stumpage there is practically three to four dollars.

(Referring to certain figures shown him, which the witness had made up by request, he testified:)

I made that from an average of the cost accounts of all our mills. The stumpage at $4.00; cutting the logs, 40 cents; skidding, $2.00; railroad expenses, $1.50; the expense of putting the logs from the pond to the car, that is to the saw mills, to the dry kilns, and to the yard and to the planing mill, $4.00; office expenses $1.00; insurance and taxes and depreciation $1.50. Total, $14.40. I think that is fairly representative of the cost of manufacturing at each of our several mills. It will vary somewhat at each mill and at different times. The analyses of the cost account are extremely difficult because in many instances one month's operations are very much more economi-

cal than another, with other conditions and a thousand things interfering. All we can get is the general average and that is what I have given.

There are decided differences in the manufacture of fir lumber and the manufacture of yellow pine lumber, as evidenced by the figures. We have never been able, under the most favorable circumstances, to put lumber on to the cars at the figures I heard yesterday afternoon and this morning—which are the only sessions of the Commission I have attended. Our cost is very, very much greater. If we had a saw mill located at a seaport or a navigable river, where we could ship directly from the mill, and could put the output of a log, or comparatively so, directly into a vessel, of course our cost would be very much less; but where we prepare the general output of the mill for a varied car load we bring in all classes of logs, all sizes, and manufacture it into very many more pieces per thousand. We kiln dry all the good lumber. The common is loaded and dried. It all has to be planed. The expense of selling and the general marketing costs of all kinds are in excess of the prices I have heard here. Our logs run, perhaps, six to twelve to the thousand. A fir log, of course, is in many instances much larger than that. The additional expense is caused by the number of logs we have to put through the mill to get the required output. I was noticing some figures. One of the daily reports came in the day I came from home, where a mill sawed, I think, four hundred and eighty-eight logs and produced seventy odd thousand feet. That production means a great added expense, on account of the number of small pieces in the small logs that have to be manufactured.

The average production in feet of our logs would run from six to twelve logs to the thousand. The school house joist is probably two by fourteen—twenty-four or twenty-six. It would be difficult to fill an order for a considerable amount of two by fourteen in long leaf pine. We are troubled with hard shapes in long leaf pine, and if we take a log and make it into wide, thin joist, there is considerable depreciation, deterioration; it is easier to make fourteen inch joists out of a short leaf pine. In New York recently the building commissions made a sweeping order that they would not accept it at all. Afterwards that order was modified to some extent, but that shows the prejudice in architects' minds against the short leaf pine for building material.

The advantage which Douglas fir has over yellow pine in supplying lumber of long and large sizes, is that the trees

are large and sound, and we are unable to produce it. I heard Mr. Poulsen say that his price for a two by four, ten or twelve by two and fourteen by fourteen, thirty-two was the same thing. His prices showed that was his base price for those sizes. With the yellow pine the price would vary $20 a thousand on account of the difficulty in obtaining large and long pieces out of those trees. By that I mean while it is not impossible, while we produce bridge stringers, sixteen inches deep and thirty-two feet long, yet in order to do so we have to go over great distances and build a great deal of spur track, or else haul the logs a long distance to obtain big enough.

It is difficult to compete with the west in furnishing these large timbers on account of the size of our trees and the necessity of cutting over a large quantity of ground.

The single operation of putting a large log through a properly prepared mill does not vary in time. That is, the simple fact of bringing the log into the mill and putting it onto the carriage does not take much longer than for us to put a small log on to the carriage. We would have to turn the small log the same as they would. Theirs would require more time to turn a large log than a small one; but after a log is on the carriage there is no time lost, the manufacture is continuous. And the expense is very much reduced. Then, if one has an order which will take large sticks he can produce two thousand feet of lumber out of one log at a very much less cost than would be required for us to produce two thousand feet out of twelve or twenty-four logs. The percentage of uppers, good lumber, is largely increased out of a good log, because the percentage of sap on a large log is very much smaller than the percentage of sap on a small log. You would be able to produce an all hard stringer, of course, very much cheaper out of a large log than we would be able to do so out of a small log.

Douglas fir weighs about 3300 pounds per thousand feet, and the yellow pine weighs 4500 pounds per thousand feet, both green. As I understand, there is a very much greater reduction in pine than there is in fir by the drying process, because there is more water in it. If you dry out a thousand feet of pine and a thousand feet of fir into a given dimension, in flooring and things of that kind, the pine and the fir would be probably about the same. The pine by which our mills are surrounded and which we cut is fairly representative of the pine in the states I have mentioned, except in Mississippi. Our operations in Mississippi ought not to be taken into ac-

count, on account of the storm and the results of that storm, of 1906.

The mills in the south are now largely shut down. The price of yellow pine lumber is very much cheaper now in the south than the price in October. In the spring and early summer of 1907 we began to feel a relaxation in demand, and prices became softer. After the financial disturbance they slumped very suddenly. There are very few new orders there now.

I used to manufacture white pine shingles. Of course we have bought millions of feet for our lumber yards. In the old days we all bought white pine shingles only and later we began to buy some redwood. That was the first foreign wood that we bought. Redwood shingles then came in, and then some cypress, and then we turned entirely to western cedar. We did at one time use some white cedar, but they were not a great factor. I should think that the percentage of the red cedar shingles would be more than 60 per cent. of the entire eastern manufacture.

That is only an estimate on my part, but there are hardly any white pine shingles made any more. Instead there are a great many cedar shingles sold in Oklahoma, and a good many in Texas; some in Arkansas; a large amount in Tennessee and Kentucky. Those are the southern boundaries. The northern and western and eastern territory is entirely supplied, except on the extreme Atlantic coast. There are some white cedar shingles also sold. Red cedar shingles will of necessity have a market more or less over the United States everywhere. It must. I should say that it is the controlling effect in the market. All other kinds of shingles have to be sold in competition with the red cedar.

We must have over sixty yards in western Kansas. The common lumber we handle there is yellow pine at the present time. The upper grades are largely supplied from Arizona, Idaho, Montana and the Pacific Coast, and California. There is some little cypress. We made arrangements to replace the yellow pine with other lumber two and one-half years ago. We found our competitors were getting western lumber and that it was selling better in competition with the white pine than yellow pine, and in order to avoid carrying duplicate stocks, which in fifty or sixty lumber yards meant an additional investment of three hundred or four hundred thousand dollars, we determined to supply the yard where the rate situation was involved, from the west. By that I mean on the Union Pacific and on the Rock Island and on the Santa Fe.

We determined to supply that with western lumber. Our buyer was sent west and bought large quantities of common lumber and boards and dimensions and roofing, and in Idaho and Montana and eastern Oregon and also on the Pacific Coast. It was our purpose at that time, since we recognized the inevitable under the rate situation as then existed, to carry in many of those yards a complete stock of western lumber. We had to abandon it because of the fact that we could not obtain a regular supply on account of car shortage.

I ordered several million feet. We thought we would be able to deliver it in eight weeks, and it was about eighteen months. It was the car shortage which shut us out from carying that out. We could not obtain the lumber in anything like regular supply, and since we could not obtain a regular supply we had to abandon that entirely.

I said it was recognized as a good substitute for white pine, and we could obtain a better price for it often than yellow pine. There is a prejudice against yellow pine among architects. In using the expression that under the rate situation then existing I recognized the inevitable, I meant that the rates on western lumber, particularly from what is called the Inland Empire, and eastern Oregon, were in favor of the western lumber as against yellow pine. In many instances it cost less per thousand to bring it in from there than it did from Texas or Louisiana. The advance in the rate now into that territory would have made a difference of perhaps a dollar or a dollar and a half a thousand. If we could have bought that lumber at the same delivered price, or comparatively the same price, we would have contemplated, after that advance, using the western lumber. I contracted for lumber in western Washington. In the last two years all the cars we loaded, or practically all, came into the south under load. I am a lumber manufacturer and also a retailer of lumber and produce in our saw mills about fifteen million feet per month.

Our retail sales are not over sixty per cent. lumber—building material making up the difference. I presume we will handle at retail—and by the way, I have neglected to state that we have an interest in retail yards in St. Louis and Chicago—probably seventy-five to one hundred millions per year. We wholesale twenty millions a month. We buy more than we make, if you want to put it that way. Our yards are run on an entirely independent basis. We buy the lumber wherever we can buy it cheapest, and there is a small per cent. of what we make ourselves that we sell to our own yards.

A great many of the empties that we get are made empty at the seaboard. They go south loaded with grain and they may go to large distributing centers such as Shreveport or Little Rock, which points receive a great deal of merchandise in cars, which cars are there made empty; and a large number of cars go to New Orleans under load with grain. These cars load from the saw mills, going into our territory.

The grain comes from Kansas and Nebraska through Galveston, and from Illinois and Iowa and Indiana through New Orleans. Merchandise comes from everywhere—New York, Chicago and St. Louis. There is no such timber in yellow pine as twenty by twenty, eighty-five feet long. The largest order I think I ever took was for two hundred pieces, twelve by fourteen, fifties, that went to Montreal by sea. That was the largest order that we ever handled. That is in fifteen years experience in yellow pine.

Most of our mills have short carriages. In Arkansas we can only get out about 24 feet. In Mississippi and Louisiana we can cut forty to fifty feet. The general average of the logs we cut I presume, would not be over eighteen feet long in Mississippi and Louisiana. In Arkansas they would not average over fourteen feet.

I never heard of any Florida lumber going to St. Louis; not much comes from Georgia. The rates are against Georgia to St. Louis. The car companies in St. Louis, I think, have in the past bought some material in Georgia; but most of the Georgia lumber goes to a point where the rates are on equality—Indianapolis or Detroit; the rates are equal there.

Cross-Examination.

I am secretary of the Chicago Lumber and Coal Company. That company has these lumber yards. Coal is perhaps one-half of what we handle. The coal yards are all in Kansas, on the Union Pacific, the Rock Island and the Santa Fe. We were not interested in the yellow pine case. We are on both the east and the west side of the river, but we were not interested in that case. We have railroads there in connection with our mills. The railroads which are owned by the parent companies are allowed divisions of rates in some instances. We were not complainants in that suit. I was not a witness in that case.

I do not recall having taken any interest in the reduction of yellow pine rates from that section and Louisiana and

Texas to the eastern territory, as against the North Carolina and South Carolina rates. We at one time all tried to secure a readjustment into the Pittsburg territory.

You understood me correctly in stating that the average cost of our lumber was $14.40. That was in the south and includes the stumpage, the stumpage at $4.00. Our average selling price during 1907 was not far from $16.00. The yellow pine lumber is not sold on a base price, as the hemlock is. I am not familiar with the average you get at in your country. A two by four, by sixteen, is a common size. I do not object to telling you what that was selling for at the mill on August 1st, 1907, but I could only give you an approximate idea from memory. I should imagine a dimension of that kind in August would bring $14.00, at the mill, perhaps $14.50. I say that the average selling price during 1907 was $16.00 and something—you asked that question. I say it was not far from $16.00. At some of the mills it would run below that, and at some of the mills it would run above that. I should say $16.00 was a fair price. In 1906 it was a little less. Stumpage has advanced in our country in late years very much. Lumber itself has advanced quite largely in the last five or six years. Lumber was advanced slowly; it always followed the advance at the mills, but it has advanced.

I did not say awhile ago that we could not even saw down the sticks that would do for joists for school houses. He asked what was the common size of joist, and I said that a school house joist was two by fourteen, by twenty-four. We do saw those, but we would not compete on those with the west.

Lumber is cheaper at the saw mills, and the retail price is cheaper near the saw mills. If they should raise the rates into Colorado and Kansas to an amount equivalent to $2.80, I think our sales in Colorado would be reduced. Our sales would be restricted. Our mills could not absorb that advance if we could obtain better prices in other markets, we could not absorb it. I want to make that clear. If the only market we had was restricted, we could only sell in one place, we would have to absorb it, but if we were shut out of one territory, we would stay out, because we would try to market our products some place else. I don't think in our territory that we sell more yellow pine than western lumber.

It is hard to answer categorically whether if our freight rate into Colorado was to be raised on our rough lumber, so that it would amount to $3.00 a thousand on our green lumber, we could sell in that territory and make anything. It

would depend on several things, whether or not we could produce it at cost. I cannot follow you very clearly. I have tried to understand you. If there was a raise in freight rates from our section to Colorado, to the extent of $2.80 to $3.00 a thousand, the effect would be that we would not meet the competition on our common lumber. We would probably do the best we could, governed by what the conditions of the competitive markets would be, governed by the ability to find a market there. There are other things besides lumber that compete with lumber.

Competitive conditions existing now in Denver, from the south, are insignificant. I know that is so in Colorado. I have information as to what we are able to do in Colorado. The rates have been advanced in there until we are not able to sell there, and the other rates have been reduced. Our company is now building a large saw mill in Louisiana.

I should say, taking that treeless section, that it is better for the consumer there to have the opportunity to purchase yellow pine or white pine or fir, and that it tends to better conditions for them.

Our Arkansas mill is situated on the Rock Island and Iron Mountain in Arkansas. Our Louisiana mill is on the Texas Pacific and two are on the Kansas City and Southern; three are on the Iron Mountain, and one is on the Santa Fe. They are west of the Mississippi River. Our Mississippi mill is located on the New Orleans & Northeastern. Our shipping point is a town called Richburg.

All Central Traffic Association territory points base on Cairo. That includes St. Louis and other other Ohio River crossings, and also through Thebes, which is a new gateway.

The rates from all points east of the Mississippi into Louisiana, and Mississippi, and Georgia, to Cairo, are the same. They have all lately been reduced two cents a hundred pounds, and are now 14 cents. The rate to St. Louis is eighteen cents. St. Louis is not formed on the combination; the local from Cairo to St. Louis, I think, is four and half cent or five cents. The rate from Arkansas, Texas, and west of the Mississippi River, and Louisiana points, is the same, to Cairo. We have the same rate into New Orleans. It is not true that we can draw at St. Louis from all the southern combination territory, from Texas to Georgia, at the same rate, because the rate from all points west of the Mississippi River to St. Louis is two cents higher than from Mississippi. The rate west of the river has not been reduced, but in that territory we have the tap-line allowance. The rate from that territory into

Kansas, where we have so many yards, is graded. We grade it on the common point rate to the Missouri River, which is 23, and we grade it up as high as 27 cents. The average rate we maintain to the yards we have in Kansas is over thirty cents. The rate from the Pacific Coast and Washington to these same points, runs from 50 to 58-1/2 cents. The average rate from the south is about 34 cents. From 34 to 54 would be 20 cents difference. I should say that it was a fair average, that the rate from the Pacific Coast points are at least 20 cents a hundred higher than from southern pine points. That is not the minimum because we have some 34 cent points from the south. We have from 54 to 58 from the Pacific Coast. Assuming that the average weight of western lumber and southern lumber is the same, at 2500 pounds per thousand feet, 20 cents per hundred difference would make $5 a thousand, that is $5 against the Pacific Coast in favor of yellow pine in that market.

I know nothing about a statement in the Government reports that the average cost of Douglas fir is $14.20, except what I heard here yesterday afternoon. I do not think the percentage of empty car movement from the south and west is over twenty per cent. The movement to the west is very largely in box cars. It is nearly all dried lumber. I mean from Louisiana and Arkansas. You only asked me about the west. The percentage of the movement of yellow pine to points east of the Mississippi River is probably 60 per cent. on flat cars; of western lumber to the retail lumber yards, I don't think there is over 20 per cent. in normal conditions. Of course there are times—I recall last spring, after the coal moved, there were a good many open gondola cars put into the south; but that was an extraordinary condition.

Our mills are nearly all under limited output. We did not shut them entirely down.

I have been in the saw mills of the John L. Loper Lumber Company of Norfolk. I do not know them.

There are various prepared roofings sold in competition with shingles. We sell a limited amount. If shingles get too high, that substitute will take the place of shingles.

The south has a market for its high grade lumber coastwise and foreign; the best grades of the export mills, of course, go foreign. Prime kiln dried sap, as they call them, go foreign. I have never known of any movement of uppers from Texas by water to the eastern markets, but we have loaded a good many vessels with timbers and building orders. There

was quite an export movement from gulf ports; there is not any now because there is no trade.

I have never had any experience in the manufacture of fir. I don't know anything about the cost of the manufacture of timbers 85 feet long. I would not want to load them. I would not want to handle them in the mills. I should think you would have to have a very strong carriage to handle a tree of that size.

I think a raise in these rates on these lines in the controversy in this suit would have a tendency to inure to the benefit of the southern mills.

Re-direct Examination.

Our rate to Denver is 37 cents. The old rate was 34 cents. It has been advanced in the last week 3 cents a hundred. The tariff has not taken effect, but the notice is out.

Our lumber weighs 4500 pounds green. That would give us a freight rate into Denver, at this 34 cent rate, of $15.30. I gave our average cost on the production here as about $14.40. It would be practically impossible for us to compete against Oregon fir in that territory on rough green lumber of any kind, on that basis.

I am very familiar with the timber business. I was at one time located in Denver, running a retail lumber yard. That was some years ago, but we have always since been in touch with the Denver situation. At that time, we bought all the joists and timber from the coast, and since that time, as manufacturers in the south, we have not been able to reach that market on the class of building material because the rate in cents per hundred pounds does not give a fair idea of the cost per thousand. Lumber is carried by weight and sold by measure. The difference in the weight is as great a factor as any other cost, or any other factor in the value of any material.

The heavy joists and timber that supply Denver come from the coast. The common lumber comes from New Mexico. The flooring and ceiling and finishing lumber comes partly from the coast and partly from the south. We are able to sell more or less edge grain flooring. The lumber that comes from New Mexico is the common lumber—boards and dimension. The bulk of the lumber that is used there comes from New Mexico, it is fir and spruce and some little yellow pine.

Our shipments into Kansas go as far west as the Colorado

line. We stop there because there is a very poor stretch of territory in eastern Colorado and western Kansas, except where there is irrigation. There are some sugar mills in there, some good towns in there. Good Oregon lumber sells in western Kansas, eastern Oregon boards, ship lap, drop siding, and western Oregon 2 by 4's and dimension lumber are salable there. Its ability to sell practically all these markets in the central territory, taking Denver, Chicago, and around in there, depends very largely from all these districts, upon the character of the lumber and the competition as to one class of lumber would extend further into the territory of the other, depending entirely upon the character of the stuff that is offered for sale. We are able to sell, as I say, edge grain flooring in Denver, and we cannot compete in Pittsburg against longer timbers from the coast. We can sell flooring in Denver against Oregon flooring.

Re-cross Examination.

At times we ship green lumber into western Kansas, mostly heavy joist. There is not much demand for timbers; most of our stuff is kiln dried. I should think a kiln dried board in yellow pine and a kiln dried fir board would not be very different. The illustration which Mr. Cotton brought out about 2,000 pounds difference in green lumber, as I understood him, was in the markets, between the eastern and western lumber.

I do know of the Pacific Coast shipping many timbers into Colorado, heavy joists and timbers, heavy timbers like 12 by 12's and 8 by 16's, as many as the market demands.

I said, assuming for the purpose of comparison that the kiln dried or dried western and southern lumber weighed the same, 2500 pounds, the difference on a 20 cent rate, that this gentleman asked me for, would be $5 per thousand. That is the question I tried to answer. I think our dried southern lumber averages, shipping out, 2750 pounds. That is kiln dried and air dried. You asked me the average. It would be more than 2500, perhaps 2650 to 2750. It is a hard question to answer.

In 1903 there was a general change in the rate situation of Western Kansas, Colorado and Nebraska. All yellow pine lumber that originated south of the Missouri, east and west of the Mississippi river stood an advance in freight rates from 2 to 6 cents. That was caused by the fact that there was a 2-

cent rate, a general advance from all producing points in Louisiana, Arkansas, Mississippi and Alabama to Cairo, and since the rates to all the territory termed Central Traffic Association territory north of the Ohio river and east of the Mississippi river, west of Buffalo and Pittsburg, were based on the sum of the locals through Cairo, equalized through other Ohio river and Mississippi river crossings, in April, 1903, that entire rate basis was changed, inasmuch as prior to that time there were many prorating arrangements north and south of the Ohio river. So that a 2-cent advance was a minimum, and from 6 to 8 cents was a maximum in that territory, which also included Minnesota, Iowa, North Missouri, Wisconsin and Michigan. The rates being made through that territory largely on the combination through St. Louis, however, it was based on the Cairo proportions. Those rates were made an advance from 2 to 6 cents in all that territory. The rates on yellow pine lumber in 1903 to all points in Nebraska and Kansas were advanced from 1 to 5 cents. They have never been lowered.

The rates now to all points in Kansas and Nebraska are from one to five cents higher than they were prior to 1903. I answered that I thought that the advance in this rate from the Pacific Coast would be a benefit to the south. The equalization in those rates would be a vast benefit to the south. I started to say that it would be a vast benefit to the south to have an equalization of rate conditions because yellow pine stood in advance, as I have explained, of from 1 to 7 or 8 cents a hundred in all the territory to which it sought a market north of the Ohio river. The common territory or neutral territory between the west and the east was formerly Kansas and Nebraska; but by an advance of from 1 to 5 cents a hundred on yellow pine to Kansas and Nebraska and a reduction of 10 cents a hundred from the Pacific coast on two important articles, it brought the western lumber into keener competition with the south than prior to 1903. Those conditions have existed until now, and, to answer your question, the fair equalization, the fair adjustment, in my judgment of the competitive feature between western lumber and southern lumber is brought about by the advance from 3 to 5 cents a hundred in Kansas and Nebraska territory, and the yellow pine having already paid an advance, a fair equalization would be that the western lumber should also pay an advance, so that our common territory would become debatable and we could both sell. And I believe that this advance

in rates would have that effect. I refer to the lowering of the rate on spruce and hemlock in 1904, 10 cents. That has had the effect, together with a better ability to manufacture in the west, a cheaper cost of manufacture—to constantly force the yellow pine to markets east of the Missouri river.

In speaking in my direct testimony of a condition or situation which would be inevitable, I meant by that that unless there was a readjustment made, if yellow pine had to pay from one to five cents a hundred higher to Kansas and Nebraska and the western lumber did not have an advance, we would eventually and inevitably be driven out of Kansas and Nebraska, to a larger or less extent, according to the variety of the material that was sold.

All I know about the cost of production in the west is the testimony I heard here yesterday afternon and this morning. If people are able to produce lumber from the pond to the car for $3.60 to $3.75, they have a very great advantage over the southern man, who cannot do it for that price, or anything like it. Added to that comes the advance in the cost of the freight rate into a common territory, with an advantage given them by a reduction on the woods which were in the past considered inferior and not competitive. That is spruce and hemlock were not considered as great competitors when they paid ten cents a hundred higher than fir. In other words, they took the cedar rate at that time.

Our lumber producing operations are in the lower Mississippi Valley, on both sides of the river. Our limit in the markets north of the Ohio river, on the east is Ohio, as a general thing. We were never able to get into Pittsburg or Buffalo, on account of the conditions that obtain. In other words, the rate to Pittsburg was as high as it was to New York. We sell from Eastern Indiana and Eastern Ohio on the east, to Colorado on the west. We have shipped lumber to Duluth. We used to ship it into the Dakotas. We have not been able to do so of late years. We have also shipped some lumber to Canada.

In those upper Mississippi markets we now meet the competition of this Pacific Coast lumber, particularly at sash and door factories, car companies and railroad companies.

(The attention of the witness was called by counsel for the O. R. & N. Company to a list of Texas prices made in the Pacific Lumber Trade Journal, published at Seattle, September issue, 1907, page 10, as to the prices of lumber f. o. b. the mills at Texas, supposed to be about thirty days prior to

the date of the issue of this paper, and the witness was asked whether those were about the prices of Texas stuff. (Continuing his testimony he stated):

The prices were higher than we were able to obtain at that time. They may have represented the list prices. I think the freight discount at that time was from $2.00 to $4.00 a thousand. I presume those were taken from list prices. I think at that time it would be about $2.00 to $4.00 a thousand off from those. We could cut 4 by 4's thirty-two feet long. We can cut thirty-two feet easy. That discount of $3.00 to $4.00 a thousand would not apply on all those items. That No. 1 flooring means hard face edge grain flooring, vertical grain, hard face, and it would be more than $34.00. (?) On common boards, probably $1.50, $2.00 perhaps. So in September the discount would run from $1.50 to $5.00 or $6.00 a thousand off that list. The market was not quite as weak in August as it was in September.

I said that the advance in rates in Southern territory on yellow pine in April, 1903, from one to five cents a hundred pounds had not been taken off to the Western territory. By that I mean Kansas and Nebraska. From all the mills that were involved in the Tift case and the Central Pine Association case, the advance made in April, 1903, has been taken off as to all of that territory known as Central Association territory, lying between the Mississippi river on the west and a line drawn through Buffalo or Pittsburg on the east, and north of the Ohio river on the south. Has not been taken off west of the Mississippi.

The minimum in the south is 34,000 pounds now. It was changed from 30,000 to 34,000. I am not familiar with it from the west. I think on shingles it is 24,000 pounds. I am not familiar with the minimum on lumber from the west. If it is less than 50,000, that overcomes the difference in the weight between the fir and the yellow pine, but as I say, I don't know what the minimum is, I didn't know it was 50,000 pounds on lumber.

It is not my idea of equalizing these differences to raise rates irrespective of conditions or irrespective of the results produced upon the consumer, so long as we can sell our lumber on an even basis. We certainly did object to the raise that was made on our folks down south. We did not appear in the Mississippi case. It was the Georgia case. I did not say that now that that was not changed, that I think these railroads ought to be permitted, regardless of any conditions,

to raise this other rate. Some of our changes did amount to 25 per cent. of the rate. That did amount to something.

The rate to Des Moines was raised from 22 to 27½ cents. That is 5½ cents, nearly 25 per cent. The rate to St. Paul was raised 8 cents, from 25 to 33, or 33-1/3 per cent.

Mr. Teal: Let us take it in Kansas and Nebraska.

Mr. Millard: The percentage there was not so great.

Mr. Teal: It averaged along there, 1, 2 and 3 cents, did it not?

Mr. Millard: Some as high as 5 cents.

Mr. Teal: So that because you had a raise you thought it proper for us to have a raise?

Mr. Millard: I said the conditions ought to be equalized.

Mr. Teal: By a raise?

Mr. Millard: Yes, or a reduction on yellow pine.

H. E. CLARK (Page 1496), a witness for the defendants, testified:

I reside in Minneapolis; am a lumberman. I am associated with several companies which are subsidiary companies of the Shevlin-Carpenter Company. I have been in the lumber business since 1886, in the State of Minnesota all the time. Up to four years ago I had general charge of the Shevlin-Carpenter Company. Since then I have taken life pretty easy, but I have kept track of the various operations of the different companies. The Shevlin-Carpenter mill shuts down this season for the last time—the Shevlin-Carpenter Company, in which Mr. Shevlin and I are interested with two other gentlemen, owns mills at Crookston and Bemidji, and we just shut the mill down at St. Hilaire. Crookston is twenty-five miles from the border line of North Dakota. It is 283 miles from Minneapolis. Bemidji is 90 miles further east. The St. Hilaire mill commenced to be operated in 1897. The Crookston mill was started in 1898, and the Bemidji mill in 1903. Those mills saw white pine and Norway. The first few years that we operated, the bulk of the lumber went to North Dakota and Minnesota. I made up a statement of the percentage of the lumber that went into the State of North Dakota. In 1900 we put in 64 per cent. of our output of 42 millions, which was 27 millions, that is, of these three mills. In 1900 we only operated two mills.

In 1901 we put in 74 per cent., or 51,000,000.

In 1902 we put in 69 per cent, or 55,000,000.

In 1903, 42 per cent., or 34,000,000.
In 1904 we put in 44 per cent., or 32,000,000.
In 1905, 38 per cent., or 44,000,000.
In 1906, 34 per cent., or 36,000,000.
In 1907, up to the time that these figures were given me, 28 per cent, or 25 million.

The amount put into North Dakota has steadily decreased. We are situated, as I said, within 25 miles of the North Dakota boundary, and the State of North Dakota has been growing very rapidly, and consuming a large amount of lumber; but our percentage into that territory has steadily decreased instead of increasing. The freight rates from our mills into North Dakota are high enough. When we started in business we could do business as far as Williston, North Dakota, where the rate was 24½ cents. We did a limited amount of business. The distance is 350 miles. As the price of white pine lumber raised, the western lumber worked further east, until this last year we have done very little business west of Devil's Lake, which is 114 miles. Devil's lake is on the Great Northern Road, 114 miles from Williston. The rate to Devil's Lake is 12½ cents. That is as far as we have shipped in any quantity. We have gone a little bit farther. We are rather fortunately located for the North Dakota business. A man can send in an order to us, or even from farther west, and can get his shipment very quickly, as at our mills we are located on the Great Northern Road, and the empty cars coming from Duluth, that have gone to Duluth with grain, or coming from Minneapolis, that have gone to Minneapolis with grain, pass through either Crookston or Bemidji. We can take those cars out and load them in 24 hours and send them on their way west. We have an advantage by reason of that fact. We can make quicker shipments. We built this mill at Crookston because we expected to supply the Dakotas and Minnesota. I cannot say we have been disappointed. We have placed all our product, and yet it does not seem to me that we have placed enough here in North Dakota for the location. I went over the Great Northern Road in 1904 with the grain men, and I discovered after we got beyond Devil's Lake, that there was an increasing amount of western product in the sheds of the lumbermen, and when I came back I made a good deal of a row about it, and made up some figures, and tried to get a reduction in rate from the railroad, in which I was unsuccessful; but the business in 1905 picked up so,

and continued so good that up to the present time I can't say that we have suffered greatly for the lack of the North Dakota business. The business has been placed outside of North Dakota in Minnesota, Iowa, Southern Wisconsin and Illinois. Some special things have gone further east than that, but a very limited amount. The lumber mostly consumed in North Dakota is the ordinary building materials, the ordinary sizes, and 2 by 4-16 being the standard. Then they use a great many 2 by 3 boards. They want even commoner than common lumber. They want a good cheap lumber, described here as Pacific Coast common lumber. Referring to Mr. Millard's testimony as to the six grades of common lumber, we don't make but five grades of boards. We make the 1, 2, 3, 4 and 5 boards. I don't know where the 6th grade comes in. The competition of Pacific Coast fir in our territory, Minnesota, Iowa and Illinois, consists of a good deal of stuff which we cannot furnish, which is long joists and heavy timbers. In parts of Iowa we are able to compete with Pacific Coast fir. I and my associates have even larger interests on the Pacific Coast than we have in Minnesota. We have no mills there. I have made a computation as to the comparison of the rate that we pay and the old 40-cent rate into North Dakota. To Rugby, which is 171 miles from Crookston, we pay 15½ cents. It is 1362 miles from the coast, and they pay 40 cents, or did. Now, taking it on a mileage basis, we should have a rate of 5 cents. In other words, we are charged 310 per cent. on a basis of equal rates per mile. On the new rate of 50 cents, our rate would be 6.3 cents, or, on that basis of the new rate, there is a percentage overcharge of equal rate per mile of 246 per cent. I am just picking out these points as I go along. The next point is Church's ferry, where our rate is 13½ cents. The mileage from Crookston is 133, and from the coast 1400. Our proportionate rate should be 3.9 cents, as against the 40-cent rate, and the percentage of overcharge there is 346 per cent., and based on the new rate of 60 cents, our percentage of proportional rate would be 4.7 cents, and is an overcharge of 287 per cent.

I was served with a subpoena on Friday, and I started to work on that statement on Saturday. I had the materials for that before this time. Four years ago I took it up and made a similar comparison for the purpose of trying to get a reduction in rates.

In 1906 the output from our three mills was 138 million; in 1907 it will be about 88,000,000. I don't mean the output of the mills, I haven't got the output of the mills. That is the amount of lumber sold. Our sales for the year 1907 to date are about 88,000,000. My judgment of the reason for that falling off is general business conditions. I was away until the first of June. I got back about the first of June, and after getting a little into the business, I saw that our business was not keeping up. I thought it was a pretty good plan to increase our force of salesmen, which we did, and we kept increasing them until, as I say, we have sold 88,000,000; but it was only by extreme hard work that we have done it. We have received very few orders within the last thirty days. During this coming winter we are going to cut down the output of our mills two-thirds. We will cut down our logging operations two-thirds.

Cross-Examination.

Our company, as a company, does not own anything on the Pacific Coast. I was going to say to you that Mr. Hickson, one of my partners, is largely interested in the Cloud River Lumber Company. Mr. Shevlin has bought a large tract of timber in Oregon, in the DeShutes Valley. Mr. Shevlin and I together own a large tract of timber on Vancouver Island, and another large tract of timber near Vancouver, on the main land, and one of our concerns has a large holding in Montana. My interest, and Mr. Shevlin's, consists in large timber land holdings out there. Our place is located at Crookston, Minnesota. We are manufacturing our own timber. On the one hand, in Minnesota we are manufacturing and selling and on the other, in the West we are holding; in the East we are converting our timber into money. The price of our lumber has very steadily advanced in the last few years. I cannot give the cost of our operations in 1906. I haven't any cost figures with me at all. I do not remember that. I am secretary at the mill. These cost figures pass under my observation. We have a monthly report, but I can't carry it in my mind. I could not give the Commission any idea of the cost of our output in round numbers as an average, and be anywhere near correct. I could not give the difference in 1906 between our cost and our average selling price. I can say that our profits, the last two or three years have been

very satisfactory. I haven't had anything to do with the timber buying in Minnesota for ten years. We never charge for our stumpage in arriving at our cost in our mill. The lumber we manufacture is white and Norway pine. There has been a very rapid advance in white pine prices. By reason of that rapid advance in prices, wherever the substitute is cheaper, it usually does take the place. The Dakota country is a treeless country. If the fir timber of the Pacific Coast was not in there on the present prices at which we sell all those farmers out through North Dakota, they would be paying considerable more for lumber today. The part that is troubling me is not the price at which it is sold to the farmers and the consumers, but it is as to whether or not the rate does let lumber in there that they can buy cheaper than ours. I do not pretend to say that a rate per ton per mile, one hundred miles from Chicago on lumber, or anything else, ought to be the same as the rate on a long haul, but I think there is too great a discrepancy between the rates as they exist now. In speaking of this 200 and 300 per cent., I don't know whether a very large percentage does not exist on all long hauls over short hauls. I never made up a table before in my life. I don't know whether every railroad distance tariff within a state, on local distances, is higher than its distributive tariff in the same state. I should think that every distributive tariff between the states is higher than the through tariff, but I don't know. I made up these percentages to put it strikingly before the traffic men when I wanted to get those rates reduced. I did not get a reduction in rates.

I don't know what number five boards are worth at our mill now. I should say they were worth about $9, but that is just a guess. I haven't got my price-list with me. I don't know what No. 4 boards are worth. I would have to get the price-list before I could answer that. I could not state to the Commission what our profit was last year at our mill; I could not even approximate it. I am secretary of the company. I should be familiar with whatever went on in the books, but I must confess I am not; and I don't see why I should be asked that question anyway, as I am not a party to this suit at all. I have got as large an interest on one side as I have on the other. I cannot give it to you. I cannot state what the price of our stumpage is. I do not know what value it has, nor the price of stumpage there generally.

I have manufactured there a long time; have manufactured 138,000,000 feet. I do not know the price nor the price of stumpage. That is not in my line at all. My line has been that I have looked after the operating of the mills. For taking the log out of the mill and putting in onto the car, I should say about $4.25 per thousand feet. That includes everything. I do not know what we have been paying for logs. I don't have anything to do with log buying. I do not know what the cost of logging is, and have no idea. I could tell about the Shevlin-Carpenter Company, because I just closed up a deal on that. I sold some logs at $17.50, and the cost of logging was $6.25, and I figured about 25 cents to look after it, so that cost $11 stumpage. That is about all we have been giving.

The company has owned a lot of stumpage. It is capitalized at $300,000. We haven't declared any dividends within the last few years. We have accumulated all our profits; have kept all our profits and used them in the business. We have conducted our business at a profit, even though the percentage of lumber which we have sold in North Dakota has been less. Everybody has found a ready market for everything for the last four years. If the rates upon these western roads are increased ten cents a hundred into North Dakota points, it will not remove all competition, because we would have competition from Kalispell, and the districts in there. It will remove fir as a competitor. I did not say that if these advanced rates go into effect, this Pacific Coast lumber cannot compete with us in North Dakota. I did not understand the question. We would have competition. Our competition would be moved a little farther west than it is now. It would be hard for me to say how far west and upon what grades. I could not say. We do not get a trade all the way across Dakota now. We do not sell very much west of Devil's Lake, very, very little. That is practically the farthest west we can go, as against this Pacific Coast lumber. I do not know how much we have been making a thousand on common lumber. The advance into Dakota was ten cents. If this advance was maintained, I don't know how much farther west I could go. I could go somewhat further. If I could get $2.80 more a thousand than I am getting for our lumber today, I could probably get west to Minot. That would be 232 miles. How far west I could go would depend upon how small profits I would be willing to take. It would

depend also to some extent upon whether part of the freight rate was absorbed by the purchaser or the consumer. We have no warehouses in North Dakota. We have a few lumber yards, and we use cedar. We don't make any pine shingles, and have not for years. I don't know what fir they sell east of Devil's Lake. Fir comes into Crookston, where our mill is.

D. M. CLOUGH (P-1526), previously sworn, recalled for further cross examination, testified as follows:

My investment in the Clough-Hartley Company, in the shingle business, is about $65,000. We installed sixteen upright shingle machines. Our average cut of those sixteen machines was 600,000 a day. We ran for two months. It is not true that one-fourth of the total production has not yet been marketed. We cut about 30,000,000 and we have about 6,000,000 on hand. We cut a little over two months—we cut a little over 30,000,000. I said the actual cost of the lumber was about $14 a thousand, the logs averaged, which would be $1.40, plus 70 cents, which would be $2.10.

Re-direct Examination.

It does not cost any more to log flooring logs than it does No. 2 or merchantable.

Re-cross Examination.

The flooring logs are the best we have, the largest logs and the best logs. The truth of the matter is, you can log them cheaper than you can any of the rest, because you get them faster, you get a thousand feet faster than you do in the cheaper, smaller, poorer logs. Any logger on earth knows that. It costs you more to log poor logs than the better ones.

WILLIAM J. MILLER (P. 1529), a witness for the defendants, testified:

I live in Omaha, and am in the lumber business. Have been in the lumber business in Nebraska about 23 years. My plant at Omaha is a wholesale and retail plant. The name of my firm is the Updyke Lumber & Coal Company. We have

country yards in Nebraska in addition to Omaha. They are in the eastern part of the state, one at Arlington, at Henderson and at Wahoo. Our Omaha yard is our chief place of business. We handle practically all grades of lumber there, that is, from the south and from the north and from the west. We handle fir from the Pacific Coast, and red cedar shingles. In fir, about all we handle is what we call timbers, bridge planking and finish lumber and drop siding. We never compare that kind of Pacific Coast lumber against the yellow pine. It takes the place of white pine. It works in our market as a substitute for white pine. When I say we never compare it with yellow pine, I mean by that, the way orders come in from the yards, and as a rule a man will say: "I want either white pine or fir." They want this mostly for outside work, or for sills which are down next to the ground, and they want fir sills, because they will not rot as readily as the yellow pine, and they want outside finish and the sidings because it will take the paint better. There seems to be in our trade in the eastern half of that state, a decided preference for Pacific Coast wood for certain purposes as against the yellow pine. That is where it is outside or down near the ground.

It is my understanding that the raise in the freight rate for our district is five cents. In my judgment the increase in that rate will not affect the sale of the kind of Pacific Coast lumber we have been using there. The five cent raise in rates would only be about $1.25 or $1.50 at the outside, and white pine is much higher, and in fact, in timbers it is impossible to get white pine timbers, and they will pay the difference. I base my statement on my actual experience in the past as to the preference for the Pacific Coast lumber. We ship lumber from our mill yards to our yards out in the state. It is true of Pacific Coast stuff in limited quantities. We are shipping mixed cars all the time; stuff that has already come from the Pacific Coast to Omaha, and then we ship it back west again out on a local rate. That varies. The rate out of Omaha is four cents, the first carload rate out of Omaha is four cents and it runs up from that. We seldom ship any fir on a higher rate out of Omaha than fifteen cents. We are carrying on that method of business right along, but that is only in limited quantities, where a man wants a mixed order, fir, yellow pine, white pine and sash and doors. The increase in this rate on shingles amounts to eight cents in our territory. We sell the western shingle, entirely. I don't think this raise in the shingle rate would make a particle of difference. They do

not use anything else, and would not use anything else. The yellow pine prices showed a weakness along about June or July, perhaps a trifle in May.

Cross-Examination.

The Updyke Lumber & Coal Company, our concern, does not have grain elevators on the Union Pacific road. It does on the Northwestern and Burlington. I could not say whether our company was interested in any way in that proceeding in Omaha about the question of elevator rates over those roads. I haven't anything to do with the grain concern. They have got about 110 grain elevators. I am a cousin of Mr. Miller of the O. R. & N. Company. I believe he is the general freight agent of the O. R. & N.

In connection with this proposed advance on lumber there into the Nebraska territory, I say that that charge can be passed on to the consumer. When I say that by this action of the raise of a freight rate an advance of $1.50 or $1.65, or whatever it may be per thousand on lumber would be the result, I do not know why the same action could not have been taken in the advance of the price before, so that the lumber men would have got it, and not the railroads. We were getting enough for our product. There is no reason why they could not have gotten more. It is usually the case that they were getting all they wanted. I have to sell my stuff according to what the others sell it. I don't know what the others felt. We get our 2 by 4's, 2 by 6's and that kind of lumber entirely from the south. There is not a very large percentage of western lumber sold yet in Nebraska. I think that the only effect of this advance in the lumber rates will be to transfer five cents a hundred from the consumer to the railroads.

Re-direct Examination.

My testimony has reference to the eastern part of the state, at Omaha, and our yards in that district. As to grades, or cost of lumber, I speak of, the coast has the entire preference; in other kinds southern lumber seems to have the preference.

D. C. BRADFORD (P. 1540), a witness for the defendants, testified:

I am located at Omaha; my firm is the Bradford-Kennedy Company, in the lumber business; have been in the lumber business about twenty years. Our chief plant and office is at Omaha. We have yards there. We are jobbers and retailers both. We have yards at a number of points, at Imperial, Gering and Bridgeport. That is the western yard. We are not altogether in the western part of the state; we have them all over the state; we have them clear out in the western part of the state. We are putting in two yards in Colorado now. We have not any in there. We handle all kinds of lumber from the three different districts that we have been speaking about in this case. We are using the coast lumber almost exclusively in western Nebraska and Colorado; all kinds of coast lumber. We use it clear to Omaha, but not so much as we do in the western part. We use practically no common except in odd sizes in Omaha, or the vicinity of 150 or 200 miles west of Omaha; we use uppers, finish and long joists, long timbers in this district. West of there we use common yard stock in everything. There is quite a prejudice against yellow pine for the same purpose; fir is much preferable, in timbers particularly. As a rule consumers pay a higher price for fir on account of that preference. That is true of all outside lumber, siding and finish. We have found lately a good many of the state buildings, school houses and court houses, have been specifying fir, even for their common lumber. I mean in Nebraska.

The effect of this raise of five cents on our sales of western stuff in the district in which we operate will depend altogether on what they do on the price. On a normal price, it would probably be restricted a little in a certain district. Around Omaha, I do not think it would restrict it any. In our western yards except the extreme western ones, I think the sale might be restricted a little. This preference for the fir, on account of its quality, will in all districts, to some extent, absorb that difference itself. Fir seems to take the paint better, and it seems to work better—the contractors prefer it. We handle all this lumber out of our Omaha yards and our western yards. We ship a great deal of it back. We load for mixed cars and ship it back from Omaha. We get as high as 20 and 25 cents out of Omaha. That makes it

pretty expensive. It would break near a fifteen cent rate, fifteen to eighteen. We have no trouble in doing business on a fifteen cent rate. We do quite an amount of business on that.

I noticed that the lumber market conditions were getting pretty soft late in the spring, the prices along about May, I should imagine. The shingle supply in our count is practically all red cedar. I don't see how this raise will have any effect on the amount of cedar shingles consumed in Nebraska. They fluctuate in the neighborhood of a dollar a thousand, and that does not make any difference.

Cross-Examination.

We have eleven lumber yards in Nebraska outside of our main yard. Including the main yard we handle something over a hundred million a year in those yards. The Omaha yard is on practically all Nebraska roads. Our other yards are on the Union Pacific and the Burlington. We handle all kinds of lumber. Southern pine, yellow and white, and fir from the cost; some cottonwood, but not much; also pine from eastern Washington and southeastern Oregon. To answer definitely, we get a great deal of our fir or our pine in eastern Washington. I should have to estimate that probably ten or fifteen per cent. of our total output comes from the Pacific coast west of the Cascade Mountains. I have never separated it.

I take the American Lumberman and read it very seldom. I did not have to my knowledge any idea, or hear anything of this proposed advance in rates from the coast, in May. I don't remember. This advance could not possibly have any effect on the yellow pine that I could see; that is, if the fir was reduced in price it would not affect the yellow pine prices at all. If the rate was reduced one-half the price to Nebraska, it would not affect yellow pine sales at all; not very much, then. We could not get enough at that time. Under the present rate, the fact that there was a reduction from the coast to Nebraska would today affect yellow pine.

In speaking about shipping to Omaha and then shipping back to our yards west of Omaha, that is because possibly they do not want a full carload, and it is pretty hard to get a car loaded as you want it, and it is almost impossible to get the shipments over the road after you make them, or get the cars to load them. That I suppose is the reason why

they do not ship directly from the coast. It is not due entirely to a car shortage, but largely. The items that we do reship from Omaha, we sell at a profit; ship them to Omaha and then back to the yards in the western part of the state and still sell them at a profit. It would be a matter of opinion who would have to absorb the increase in the rate, the consumer or the mill man. My best judgment is that the mill man will absorb it, as a rule. The consumer may stand a share. Western Nebraska took a forty cent rate on November 1st, the part from Alliance to Denver on the Burlington. The common fir goes more largely into the forty cent district than it does into the fifty cent district. Common fir does move into the fifty cent district, quite a quantity. As I said, we handled a good deal of it in the fifty cent district under the old rate, special sized particularly; quite a considerable amount of it, but not nearly so much as under the forty cent rate. We do not substitute fir for western hemlock in beveled sidings. The dear mill men substitute it for spruce. They ship it for spruce, I understand. I do not think an advance of rates, of five cents into Nebraska will affect the market on the fir that goes into that district now. That is not because it is principally of special sizes. I guess the lumber men could have charged five cents a hundred more for their lumber than they have been charging. They raised us $10 without a whimper, and I guess they could raise it $1.40 more if they wanted to.

Along in the early summer or late spring of this year the market was soft, and prices were soft. I hardly think they could raise prices successfully on a falling market. I did not say that not nearly as much lumber would go in under the fifty cent rate as under the forty cent rate. I said a good deal more lumber under the old rates went into the forty cent territory, a larger per cent., than into the fifty cent territory. If the rate into that forty cent territory is increased 25 per cent., or, we will say, $2.80, I do not think that would have a decided effect in restricting the shipments into that territory, unless it would be possibly south of Denver, in Kansas, and possibly southern Colorado. North of there I do not see how it could, for the yellow pine rate is so high that the difference is a good deal more than $2.80 now. 48 cents is the yellow pine rate to Bridgeport and Scotts Bluff, I think; where our yards are on the 40 cent zone. The Minneapolis rate on white pine is 43 cents. We get white pine lumber from Duluth, Ashland and Marinette. Those rates are from one and a half to five cents, or even seven

cents higher than the Minneapolis rate, is my recollection. The country in there buys some Montana pine, yes. The rate from the south there is 48 cents from most any part west of the Mississippi, Louisiana, Texas and Arkansas to our yards at Scotts Bluff and Bridgeport. Our yards at those places are east of Denver; yes, many miles northeast. The rate to Denver from that same territory has been at times 34 cents. I understand it is raised today to 37 cents. I do not know that it has been raised. The Denver rate has bothered a good deal. It is raised off and on right along. I guess you could get into Denver most of the time if you went at it right at 34 cents. By that I mean taking a specific point and shipping over a specific route from the south. By that I mean you understand the rates as a rule apply over the entire southern zone to Denver. They do not always do that. You can get it out of the tariffs. As far as I am concerned, it is simply a matter of understanding the tariffs. Our rate into Omaha is 23 cents; a number of hundred miles west of that is 34 cents, and we pay 48 cents for some of our yards. Bridgeport, I should imagine, is about 350 miles from Omaha, and about 200 miles from Denver to Bridgeport. The Burlington road connects with Denver. It is on the main line from Denver to the Pacific Coast.

Re-direct Examination.

I have bought timber out in the northwest all this year in Oregon, Washington and Idaho. I have paid from about forty cents a thousand up to as high at $2. The stuff I bought in Oregon cost me a little less than 50 cents a thousand; in Washington it cost me in the neighborhood of a dollar, and in Idaho it cost me a little more. We mill lumber out in Idaho. We have bought lumber from both the Inman-Poulsen mill and the Eastern & Western Mill, both at Portland. The products of both those mills are about alike as far as we know. This timber that we bought was in Eastern Oregon and Western Washington. I do not know the country. It is in the vicinity of Spokane. Spokane is in Eastern Washington. What I meant to say was Western Oregon and Eastern Washington; in Jackson County, Oregon, in the southeastern part, that was pine and fir. I paid a little less than 50 cents a thousand. Fir there is pretty good fir and pretty good pine. It is not quite inaccessible; it is very accessible, the tract there I think is about nine miles from the main line of

the Southern Pacific; and on the railroad that is being built to Crater Lake, that goes right through it. It is also on a navigable stream, on the Rogue River, and we can float it to tidewater if we want to. I do not know the county where the timber was located that I purchased in Eastern Washington; it is northeast of Spokane. I don't remember the county. That goes from two and a half to four and five million to the quarter section, depending on what woods you take. That is pine, fir and tamarack. There is fir there. It is about a mile and a half from the main line of the Northern Pacific.

I am engaged in milling in Idaho. We have got about twelve million feet of lumber there that we have got to ship east. There is an advance in rates from that territory.

CHARLES S. KEITH (p. 1565), a witness for the defendant, testified:

I am President of the Central Coal & Coke Company, located at Kansas City. We have been in the lumber business about fifteen years. My company conducts its milling operations in southeast Texas and southwest Louisiana. We are operating mills of a total capacity of 150 million feet. We operate in yellow pine, do not conduct any lumber yard. We dispose of our product in Texas, Oklahoma, Kansas, Nebraska, Iowa, Illinois, Indiana, and Ohio. We meet the Pacific Coast fir in Northern Kansas; that is, Kansas north of the Union Pacific, and in Nebraska, Iowa and Northern Missouri. I have not personally handled our sales for five years, but my information from our sales department is that we are practically doing no business in Iowa, on account of competition with Idaho and Pacific Coast material. My information is that our business in Nebraska is practically now confined to a line drawn from Omaha to Lincoln and south to the Kansas state line, and east of the Missouri River; that is the southeast corner of the State of Nebraska. My information is that where we reach rates over 28 cents, 28 to 30 cents, in the northern part of Kansas, north of the Union Pacific, that we are having a great deal of difficulty in disposing of our common material, on account of competition with coast material, that is, western material. That is our common stock. We practically have done no business in Colorado now for several years. The total sales in Colorado last year amounted to some sixteen

cars. I have a statement of the cars we have shipped into this general district from 1897 to 1907. During the years 1897 to 1898 we had only one mill in operation and our capacity of production at that time was forty million feet. During the year 1897 we put into Nebraska 57 cars; in 1898, 283 cars. Into Iowa we put 11 cars in 1897 and 42 in 1898. Into Kansas in 1897 we put 240 cars and in 1898, 469. In Colorado in 1897 we made no sales and in 1898 we shipped 10 cars. In 1899 we were operating two mills. Our production at that time was one hundred million, an increase of about one hundred and fifty per cent. We put into Kansas during that year 1899, 816 cars; into Nebraska 336, into Iowa 68, into Colorado 245.

In 1900, with two mills, we put into Kansas 766 cars; into Nebraska 277 cars; into Iowa 207 cars, into Colorado 119 cars.

In 1901 we shipped into Kansas 735 cars, into Nebraska 199 cars, into Iowa 318, into Colorado 119.

In 1902 we put into Kansas 759 cars, into Nebraska 79 cars, into Iowa 333 cars, into Colorado 27 cars.

In 1903 our capacity was increased to one hundred and sixty million, between one hundred and fifty million and one hundred and sixty million, and in that year we put into Kansas 795 cars, into Nebraska 120, into Iowa 210, into Colorado 37.

In 1904 we put into Kansas 1392 cars, into Nebraska 521 cars, into Iowa 101, and 77 in Colorado.

In 1905 we shipped 1428 cars into Kansas, 476 into Nebraska, 53 into Iowa, and 27 into Colorado.

In 1906 we shipped 1236 cars into Kansas, 660 into Nebraska, 68 into Iowa, and 52 into Colorado.

In 1907, ending June, we shipped 979 cars into Kansas, 108 into Nebraska, 128 into Iowa, and 16 into Colorado. Our fiscal year ends in June.

We put more lumber into Colorado during 1895 than any other time, 245 cars that year. The year ending last June, 16 cars. The highest year we had in Iowa was 1902, 333 cars, against 128 last year.

Keith exhibit No. 1 offered in evidence (p. 1571).

KEITH EXHIBIT No. 1

STATEMENT OF CARS OF LUMBER SHIPPED TO KANSAS, NEBRASKA, IOWA AND COLORADO FROM JUNE 1ST, 1896, TO NOVEMBER 30TH, 1907. FISCAL YEARS JUNE 1ST, TO MAY 31ST.

STATES	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	June 1st, 1907 to Nov. 30th, 1907
Kansas	240	469	816	766	735	759	795	1392	1428	1236	979	670
Nebraska	57	283	336	277	199	79	120	521	476	660	108	45
Iowa	11	42	68	207	318	333	210	101	53	68	128	39
Colorado	0	10	245	119	119	27	37	77	27	52	16	43

Number of Mill In Operation From June 1st, 1897 to Date	Capacity of Mills
Fiscal Year 1897 to 1898, One Mill.	One Mill, 40,000,000 Per Annum.
Fiscal Year 1898 to 1903, Two Mills.	Two Mills, 100,000,000 to 120,000,000 Per Annum.
Fiscal Year 1898 to Date, Three Mills.	Three Mills, 160,000,000 Per Annum.

I have a statement showing the comparative weights of yellow pine and Pacific lumber. This comprises all the different sizes of lumber that we produce, and the Pacific Coast figures which I have are taken from one of their price-lists.

Keith exhibit No. 2 offered in evidence (p. 1572).

Our percentages of grades of lumber manufactured varies in the various mills according to the quality of the timber. Our star and better will average from 11 to 14 per cent., and the balance of our production is No. 1 common or lower. It runs along every year about that way.

The market conditions of yellow pine were good up until about May when we first began to see evidences of a weakening in the market. We were not short of orders ourselves at that time, and we were not making any particular efforts to get business, but we found in what efforts we did make that our competitors were asking a good deal less than they had been up to that time. We were not forced to go into the market to any extent until along in June, at which time we found the market falling off very materially, and the prices at that time, and in fact up until this time, have been materially less than last year.

There have been a great many cancellation orders. Our cancellations began in June. We had in June cancellations for 62 cars; in July cancellations for 122 cars; August, 106 cars; September 173 cars; October 442 cars; and November, 199 cars. Those cancellations came from pretty nearly everywhere over the entire country. They have not been confined to any one district.

We manufacture up to 40 feet or 45 feet. Our average lengths, though, I should judge, would not be over 20 feet. We have practically been out of it as far as competition with the western timber is concerned, for some time, on heavy stuff. I mean sawed timber, car sills and bridge timbers, such as stringers. The fact of the case is we have not shipped any of that class of material to speak of north of the Missouri River for nearly a year. Most of our trade is to the southwest, Texas, and then our export trade. We do very little business on that material in St. Louis, on account of our rates there being out of line as compared with the rates from Mississippi points. They have a two-cent lower rate than we do into St. Louis. We cut down to eight inches on the stump, eight inches from the ground, that is our rule, everything must be cut. We save everything that is four inches wide and four feet long, and up. At two of our mills it takes eight logs

to make a thousand feet and at one of our mills they will average sixteen to the thousand. The smaller the log, as a rule, the lower it will run in grade in the manufactured produce. That is because you get into the defects of the lumber, which are generally in the heart of the log, quicker in the small logs than you do in the large ones. In other words, in a large log we get a good deal of better stuff out of it. That is my general information, that western shingles are sold all over the territory that we operate in. We have nothing to compete with them at all.

Cross-Examination.

Our sales in 1907, up to June 1st, were very satisfactory as compared with 1906, with the exception of one plant where we reduced arbitrarily our production 26,000,000 feet during the year. During the time covered by our being in business there, commencing with the first year, we have constantly increased our output up to this time. We have sold substantially our production at advanced prices right along. The result of our business as a lumber proposition has been quite satisfactory up to this time. We are on the west side of the Mississippi River. We have logging railroads down there connected with our mills, and have tap line allowances. That is geenrally customary in that country. We have such allowances.

I was one of the complainants in the yellow pine rate cases when the rates were advanced two cents a hundred. Our concern is also a large dealer in coal on the line of the Burlington, and several other railroads. We are large sellers of coal to the railroads, but not very much lumber to the railroads. I don't suppose we sold last year over three per cent.; the year before probably a little increase over that. A gentleman named Perry was a partner of mine during that time. He is the same Mr. Perry who engineered the rump Interstate Commerce Convention in 1905. He was my partner and had my sympathy.

I cannot tell you offhand how our shipments for 1907 to all territory compared up to June 1st with 1906, but I think our shipments in 1907 to all territory as against 1906 are possibly off 20 or 22 or 25 million. That is due to car shortage. That is the reason we reduced our product, because we could not get cars to handle our shipments. We issue price-lists; did not issue any in September of this year. The last

one we issued was in August. It was a reduction compared to the previous list. I could not tell you how it compared with the month before that; I have not handled the sales personally for five years. I have been in Colorado the last sixty days, but I was not soliciting business. I am testifying from reports received in my office daily. I have not been here all the time. I did not know that there had been a number of price-lists produced. I do know that they have price-lists. We get up those same things. I wil file with the Commission our price-lists commencing January 1, 1906, and coming down to date.

The competition has been getting keener for some time through Colorado, Kansas and Nebraska, between the western wood and the eastern wood. That competition has been felt in the loss of business. Two or three years ago—I do not recall the exact dates—we had up the question of what we were going to do to meet that competition. It was then a very live question with us. About that time the car shortage commenced to show up very strong, not only from our territory, but the western territory as well, and the matter was dropped, and the competition has not been quite so bad since that time, because neither of us have been out pushing business on account of all of us having all the business that we had cars to handle. I say there is a tendency developing very largely for the use of the western wood. My opinion is and my information is from our sales departments, in the first place, there is quite a tendency to use it on account of its qualities, and its ability to take paint. It lasts longer where it is exposed to the weather, it is good for outside work. And also on account of the grades as compared with our woods, it is graded a little higher than ours. Of course, it helps the consumer to get better lumber, and at a lower price, and lumber that will last longer, but he ought to be able to pay for it. There is no reason why we should have a condition like that laid at our doors. That wood is several hundred miles closer to those consumers than this. I really think that this is a scrap between the two industries. I think the consumer is pretty well taken care of. He is used to those conditions. It is the fact that the consumer likes this lumber, because, so far as his use of it for outside stuff is concerned, it is better, and it lasts longer and is cheaper. I believe an advance of five cents a hundred pounds into Kansas and Nebraska would naturally tend toward widening out or carrying our product a little further west in those states. I do

not believe an advance of ten cents in Colorado would help us any. If there was not a corresponding advance from other woods, it would have the effect of restricting our trade. An advance of $2.80 a thousand in Iowa would practically drive us out. In Nebraska it would bring us right down to the Missouri River. We could not absorb an advance of $2.80 with our present cost of production. The percentage of grades we produce, if that condition applied, we would simply have to cut our timber not so close. The effect would be to practically drive us out of those markets where there had been a ten cent advance. In Western Nebraska we meet the Idaho and Pacific Coast products, that is, the fir and western white pine. I could not state what grades of lumber, for the reason that, as I have just stated, I have not handled those sales personally. We have practically gone out of the bridge business on account of competition; we do not care anything about the bridge business; we have plenty of business to take its place. There is quite a good deal of yard stock such as 2 by 4's, 2 by 6's, and so on, that comes into Nebraska from the coast, I think. It must be coming in from there because our territory is restricted to the southeastern corner of the state. It is this western stock; I do not know where in the west it comes from. I do not know anything about the manufacture of lumber on the Pacific Coast. I do not know whether it is manufactured on orders or manufactured at random.

Re-direct Examination.

Our mills are shut down now, they are all down tight. I should say in the yellow pine district, conservatively, that the production is off fifty per cent. for that reason, in the entire south. I have taken pains to inform myself. We would like to know more if we could, because what is done along that line will affect our future. Take it in Louisiana. Practically all the mills are shut down, anywhere from 100 to 40 per cent. of the time. They have stopped running that much. I do not believe any of them are running over 60 per cent. We shut one down on November 11th. On November 1st, we started to operate two-thirds time. Last Saturday we closed down the other two mills, until the 15th of January. Everything will be closed until the 15th of January, and as to whether we will resume then is a question. The advance in the Pacific Coast rates did not cause us to shut down our mills.

We have a railroad there. It is an incorporated road. We operate trains daily. We do not have any passenger trains in the timber district. We operate the railroad for our timber business, and that is about all we have. We do handle some passengers, but we haven't any regular passenger equipment. We run the road at a loss, we are not getting a sufficient division to get anywhere near paying our operating expenses. We have one place where we get two cents a hundred which is our maximum. That requires a locomotive and it only amounts to five or six cars a day, and the service costs us about thirty dollars a day. So you see what we get out of it. We usually close down two weeks during the Holidays. Then we do our repairing.

I do not know the John L. Roper Lumber Company. They are in North Carolina or Virginia, and I do not know anything about them except by hearsay. It may be true that they are running practically full time. There are a whole lot of concerns that are running, but the majority are not running. Except in a few isolated cases I know nothing about the mills east of the Mississippi. In Arkansas and Texas our operations are possibly 85 or 88 millions a year.

WILLIAM E. BARNES (Page 1593), a witness for the defendants, testified:

I am managing editor of the St. Louis Lumberman; I am a publisher. I have perhaps 25 or 30 correspondents in the south. I am in the south myself a good deal, and I have asked in detail from the manufacturers generally of yellow pine, cypress, hard wood, as to the conditions. In the case of yellow pine my reports were from about four hundred miles. I have correspondence with the railroad people at the large producing points. It is a part of my business to obtain accurate information about market conditions. I think the curtailment in the eastern territory, North Carolina and Virginia, began as early as last May. The falling off in business began in New York very early this year, in the Metropolitan districts. That was felt first in the territory tributary to that—North Carolina, Virginia and Georgia. This matter of curtailment was discussed in Norfolk in May, and I think there was quite a general curtailment in May and June in Georgia and North Carolina and Virginia. I think it swept over the south until in June we felt it in St. Louis and in Texas and Arkansas and Mississippi, and there was a general cessation of busi-

ness, I think in June and July, both in yellow pine and cypress. In some districts it is probably not more than fifty per cent., and in other cases it is as high as seventy-five or eighty per cent. A few of the mills are running still, largely, however, because they have logs on the skids, and are afraid if they keep them they will spoil. Yellow pine logs have to be used.

I know who the Roper Lumber Company are. They have one mill at Norfolk and one mill in the suburb of Norfolk—I have forgotten the name of the town; it begins with a C, and it is near Norfolk. I don't know that they have made any curtailment, and I don't know why they should make any. We understand that Mr. Rogers owns the Roper Lumber Company, and they are at work on material for the Tidewater Railroad, which is being built. It is the understanding that their operations are under a special contract for that railroad company.

Cross-Examination.

My paper is devoted to the yellow pine, cypress and hard wood interests, southern pine. We have correspondents on the coast, however, California. We represent the yellow pine interests. In Georgia and the long leaf district I should say that if it was virgin timber, had never been cut over, it would average somewhere from eight to ten thousand feet to the acre. I am in pretty close contact with the Georgia mill men, and have been for many years. There is not a great deal of virgin pine left in Georgia; there is considerable in Alabama. In Florida the average cut for the preceding year or two of virgin lumber lands has been very small. The pine is very small. I do not think that the average in there would be more than 3,500 feet, or 4,000 feet at the outside. I think the man with the meager supply would have to run to keep away from the sheriff. It is the larger mills that are able to hold their stumpage and can do without getting returns on their investment. The effect of an advance of $2.80 a thousand on the yellow pine market in what we may call the disputed territory would be only a matter of opinion with me. I am not a practical lumber man in the sense of being in the woods.

HOWARD ELLIOTT (Record page 1599):

I am the President of the Northern Pacific Railroad Company; I held that position since October 21, 1903.

One of the first questions that was presented to my attention after I became President of the Northern Pacific was the subject of the lumber rates from the Puget Sound country east. I attended a meeting in Tacoma, I think it was in November, 1903, at which a great many of these gentlemen were present, and as I recollect it, many of them urged a reduction in the then existing rates. Some of them, even at that time, however, said they did not want a reduction in the rate, but wanted increased facilities. I then began to make inquiries as to the rate and to inform myself somewhat about it, and it seemed to me then that the rate was very low, abnormally low, compared with the rates, with which I had been familiar in other parts of the country. For several years I had been thinking about this lumber rate and some of the conditions that led me to think that our company was justified in making an advance can be briefly stated, perhaps.

The past history of the rate I think has been more or less touched upon here. It was put in, as I understand it, 14 or 15 years ago, at a time, when cars on the Pacific Coast were not getting any return loads. It was obviously desirable to load those cars back if they could be so loaded. It was also obvious that it was a wise move for the railroad company to do what it could to help the development of the business along its line, and apparently the western lumber, at that time could not reach certain eastern markets without some lower rate was in existence. The judgment of those then in charge of railroad properties, made what is known as the 40 cent rate, and for two reasons; one, to stimulate and help develop a very important industry; and, incidentally to load the cars to the east. At that time, and up to 7 or 8 or even 5 years ago, the Northern Pacific Railroad was not taxed beyond its reasonable capacity as a freight carrier, so it was justified, perhaps, in taking on, what might be called extra business at rates far below the average and in using facilities for the benefit of the patrons of the road, that otherwise would not have been used but might have lain idle. In the last 2 or 3 years those conditions have very radically changed. The company has been taxed far beyond its capacity, so that the lumber business cannot in any sense be called extra business that the company would be justified in taking at an abnormally low figure.

I think it is pretty evident that the western lumber business can no longer be called an infant industry that needs the stimulus of an abnormally low rate to help it grow; in fact it seems to be an extremely large and healthy child.

Another question that has come up to a very marked degree in the last two or three years, more particularly in the last 18 months, is that the general costs of conducting the railroad business in the United States and in the northwest particularly, have shown very marked increases.

The northwest is a comparatively new country and has been growing very rapidly. The lumber business has grown rapidly, many other kinds of business have grown rapidly, and the simplicity with which the business on the Northern Pacific was done before five years ago, was much greater than it is now. The complications surrounding the operation of our property today are more nearly approaching the complications in the more thickly populated states further east; towns are growing, they need more facilities. More questions are coming up in these large populous cities. There is an increase in the distribution of merchandise and freight in these towns that are growing. So, while a few years ago operating expenses were, as such things go, low compared with the roads furthest east, in the last two years—particularly in the last year—those expenses have gone up very materially. And, in the nature of things, that is to be expected as those communities become more thickly settled, and the demands on the transportation companies for better facilities increase. So those costs have increased quite largely, very largely.

Another thing is that all over the country, and in our country, the whole subject of the adjustment of rates is receiving extremely close scrutiny. It is very desirable that it should. On investigation of the rates all over the country, many rates are being reduced either by the voluntary act of the railroad, in some cases by legislation, in others by just such proceedings, perhaps, as this. Where rates have been too high, it is of course, just and reasonable that they should be reduced. Where they are too low, it is equally just and reasonable that they should be advanced. Now, we claim, I claim, that for some time past this lumber rate has been an unreasonably low rate and unjust rate in order to cater to the business, and we have tried to do it to the best of our ability; but we have had to fail, to a large extent, in taking care of the growing business in other parts of the country, and other commodities.

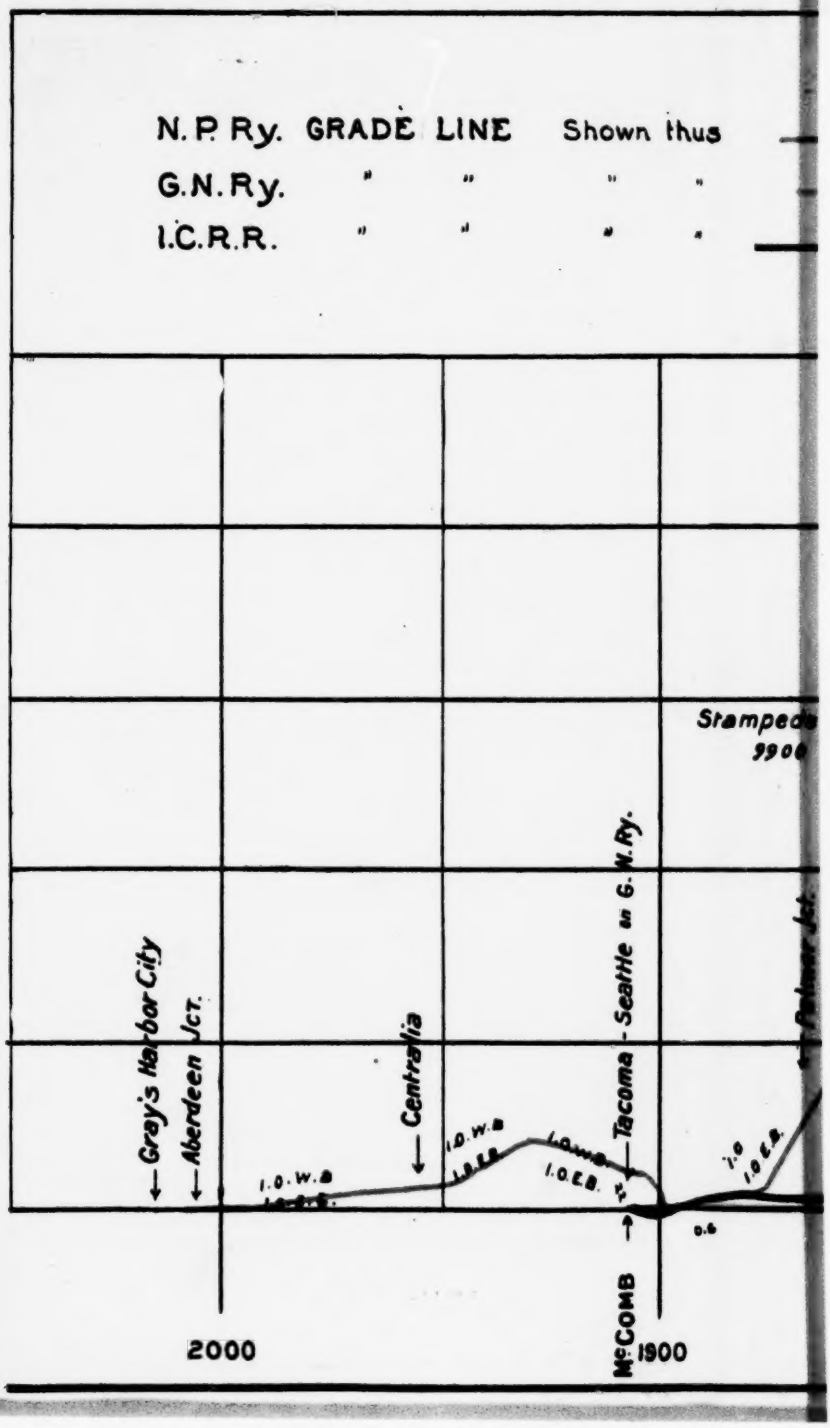
Now, this great increase in business, and particularly in the

lumber business—has forced the railroad company, in an honest effort to look after it, to make very large investments in its property. Our company, I think, has spent in the last five years for equipment and additions to its tracks, and improvements of that sort approximately $75,000,000 in order to increase our ability to produce the required amount of transportation demanded by the country, through which the road runs. That sum of money has been spent all along the line, but a very large part of it has been spent West of Billings, Montana, and a very large part of it, was induced, or the decision to make a very large part of that expenditure was induced by the thought of trying to provide additional facilities to help handle the products of the country, of which lumber is one of the most important.

Some return must be obtained upon that investment, some consideration must be given to those very large investments. So that in a general way, it seems to me, and has seemed to me, that we were justified and are justified in advancing these rates, first, because the commercial conditions under which the rate was originally made have entirely changed; second, because it is no longer what we call extra business to be taken at something far below the ordinary rates; third, we have been obliged to spend this very large sum of money to try to keep pace with the business of the country following the lumber; four, there is a general readjustment of rates going on all over the country, and where they are too low they should be advanced, just as they are being reduced where they are too high. I believe in a general way that would cover some of the reasons that have led me to think that the company I represent should make some advances. My personal opinion—and it is always hard to bring actual proof of such a thing, but my personal opinion is—that in the last eighteen to twenty-four months we have not got a new dollar for an old one from the lumber business on the Pacific Coast. We have tried to do the best with it we could, and some of these gentlemen know that they have made us feel very uncomfortable because we were unable to furnish them with the facilities that they naturally desired for the proper expansion of their business.

I was educated as a civil engineer. I have had our engineers make some comparisons between the profiles of our railroad, the Great Northern Railroad and the Illinois Central Railroad, and this profile.

(Witness produced a blue print showing the profile referred to.)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I.C.R.R. " " " "
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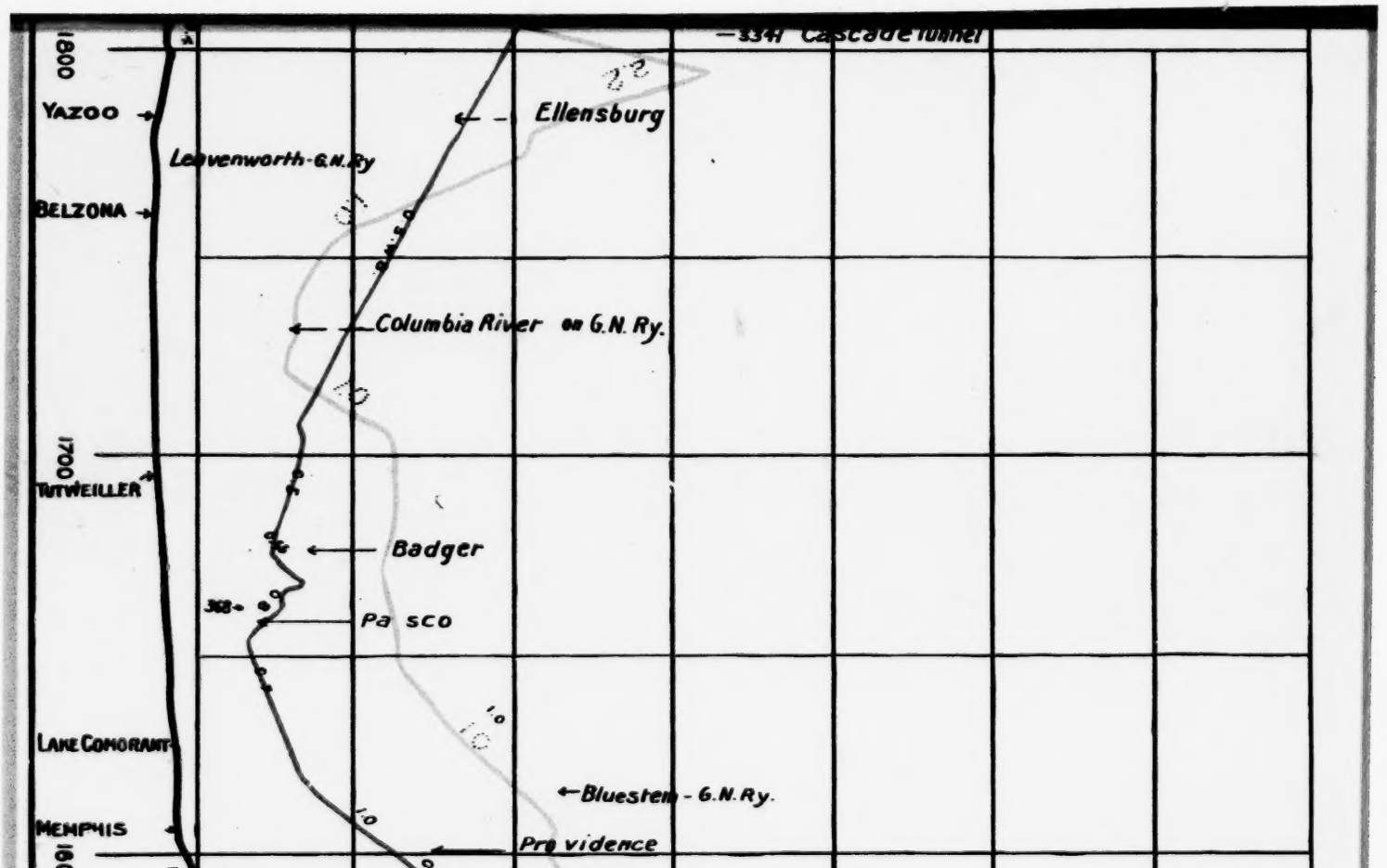
9900
Gray's Harbor City
Aberdeen Jct.
Centralia
Tacoma - Seattle on G. N. Ry.
Palmer Jct.
I.O.W.B
I.O.E.B.
0.6
2000
McCOMB
1900


1800
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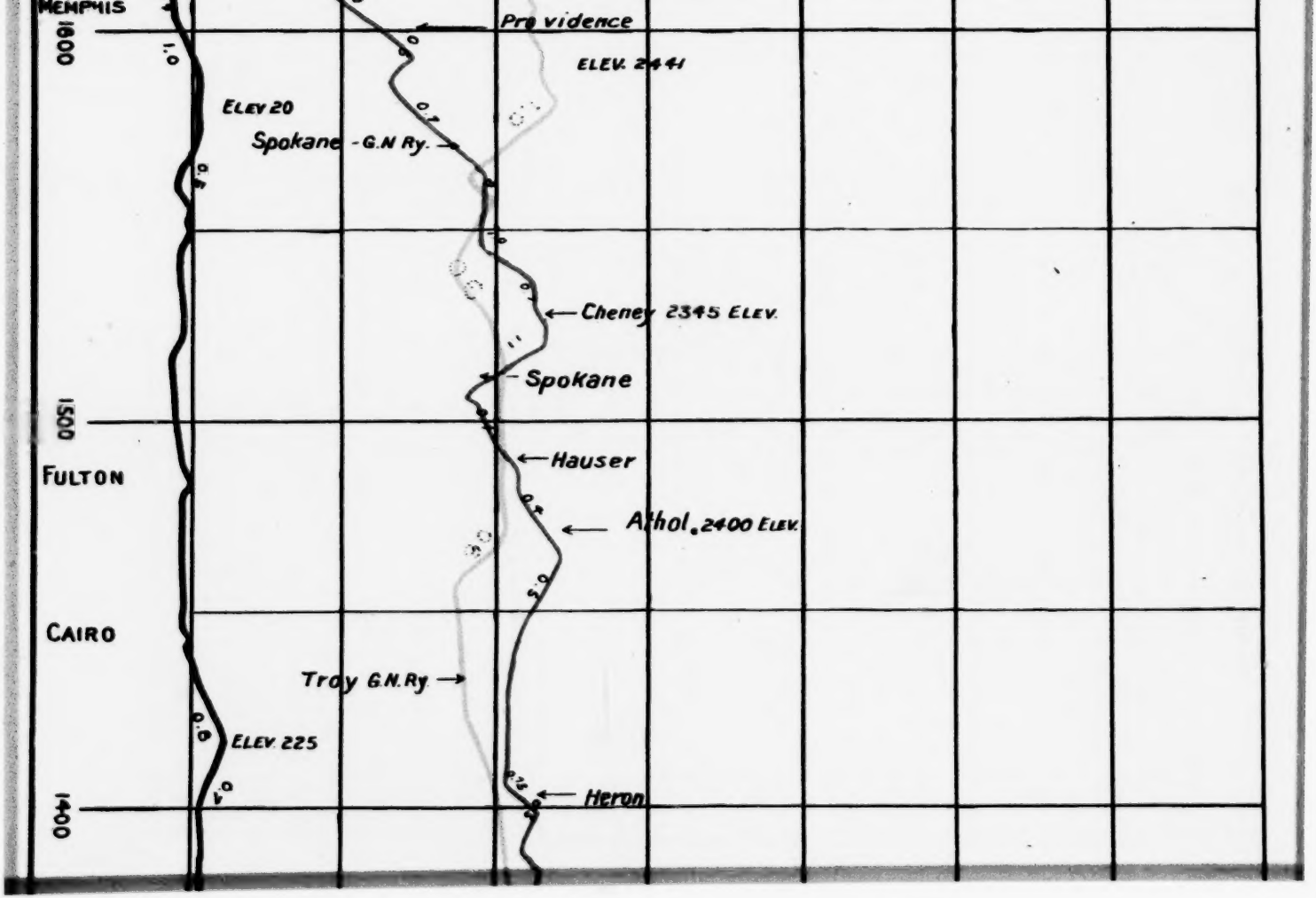
Leavenworth-G.N.Ry
BELZONA
Ellensburg
—334' Cascade Tunnel
Columbia River on G.N. Ry.
1700
TITWEILLER
Badger
368
Pasco
LAKE COMORANT
Bluestem - G.N.Ry.
MEMPHIS
Providence
1600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Providence
ELEV. 2441
ELEV 20
Spokane - G.N Ry.
Cheney 2345 ELEV.
Spokane
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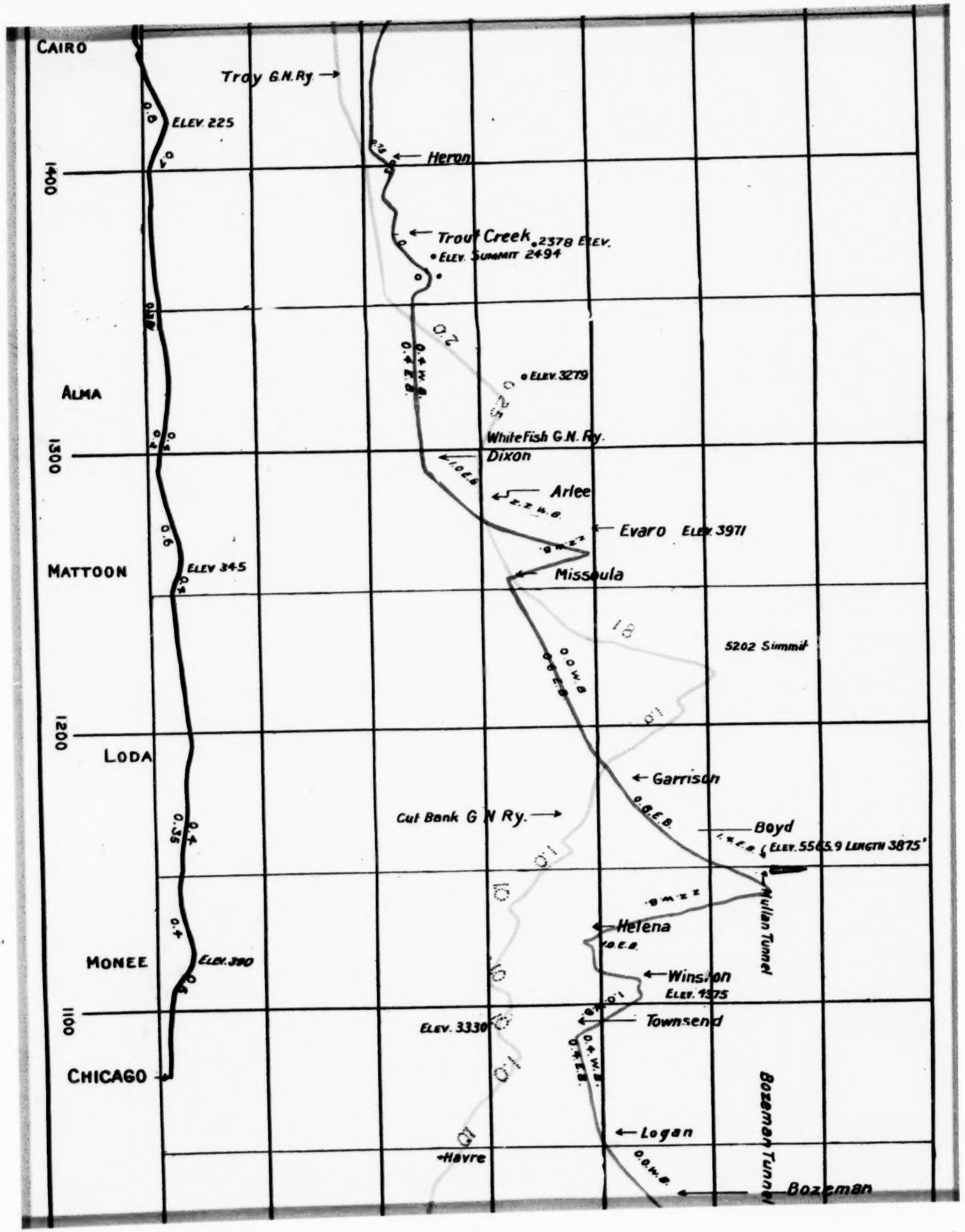
Hauser
Athol. 2400 ELEV.
CAIRO
Troy G.N.Ry.
ELEV. 225
Heron
1400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ELEV. 225
Heron
Trout Creek 2378 ELEV.
ELEV. SUMMIT 2494
ELEV. 3279
ALMA
WhiteFish G.N. Ry.
Dixon
Arlee
Evaro ELEV. 3971
MATTOON
ELEV 345
Missoula
5202 Summit
LODA
Garrison
Cut Bank G.N.Ry.
Boyd
ELEV. 5565.9 LENGTH 3875'
Mullan Tunnel
Helena
MONEE
ELEV. 390
Winston
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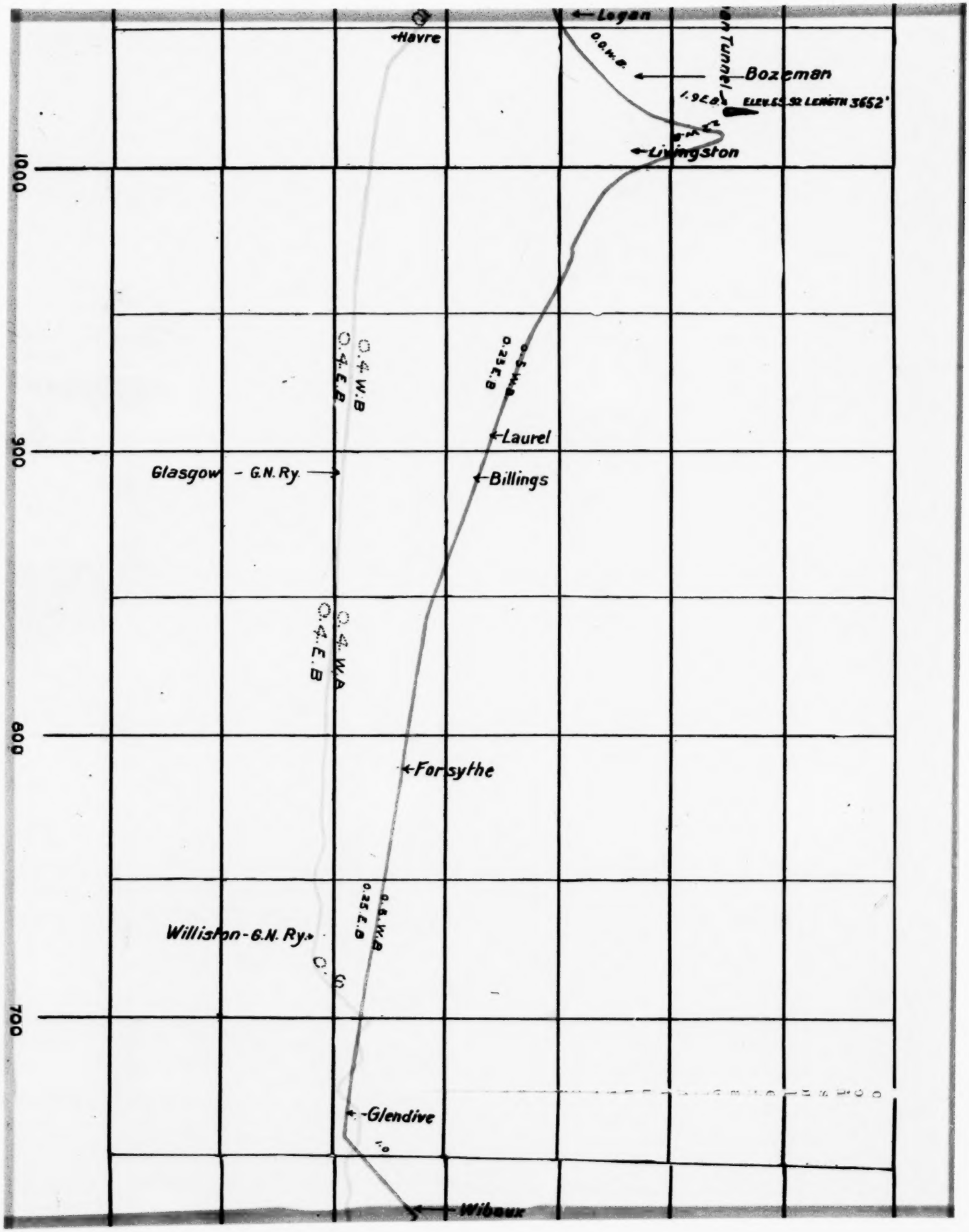
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Livingston
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Laurel
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Glasgow - G.N. Ry.
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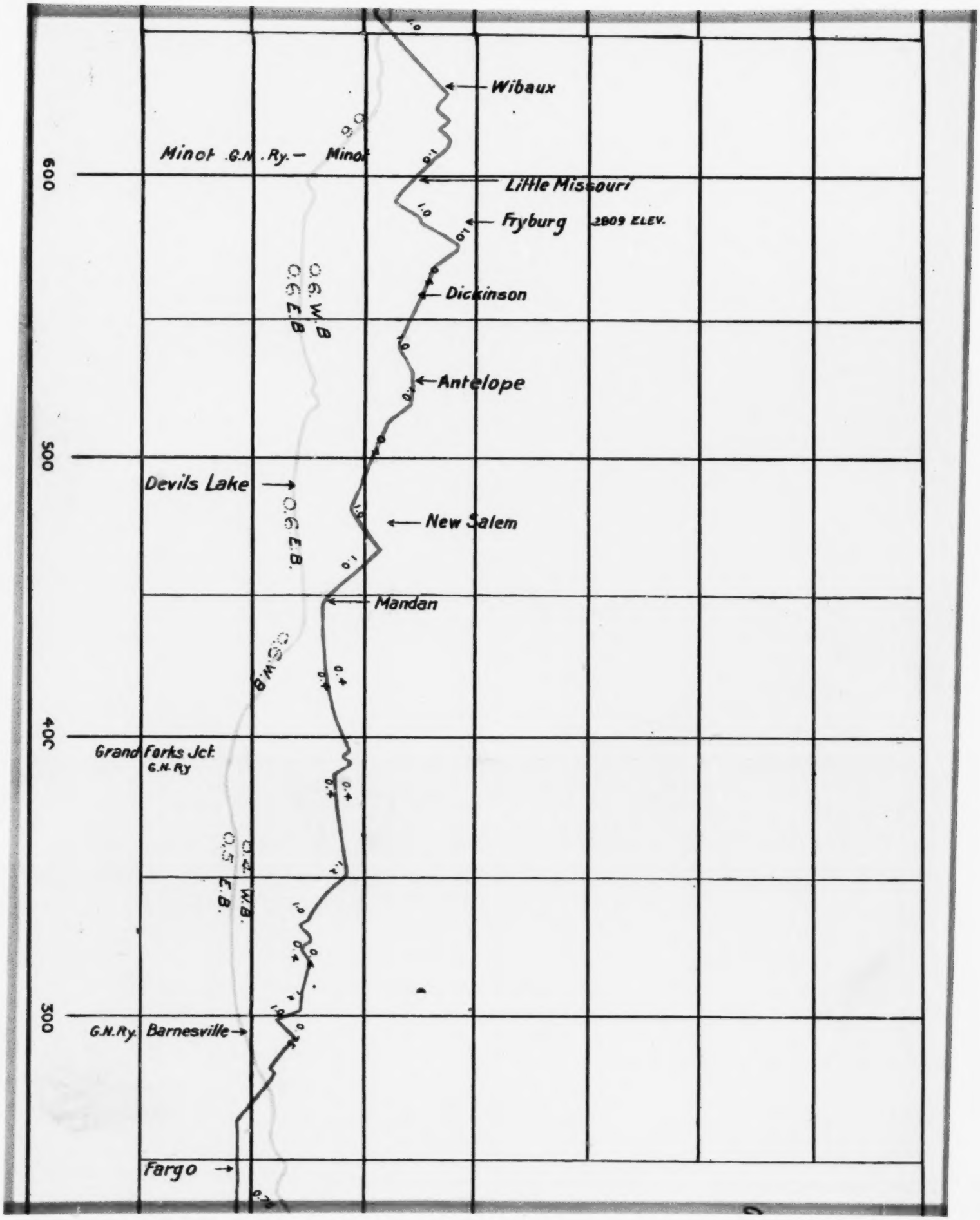
700
Glendive
Wibaux


600
500
400
300
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Wibaux
Little Missouri
Fryburg
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Dickinson
Antelope
Devils Lake
New Salem
Mandan
Grand Forks Jct.
G.N. Ry
G.N.Ry. Barnesville
Fargo
0.6 W.B.
0.6 E.B.
0.6 E.B.
0.5 E.B.
0.2 W.B.

N.P.Ry.

Condensed Profile

St. Paul to Gray's Harbor

Office of Chief Eng'r-St. Paul, Minn. Dec. 3rd 1907

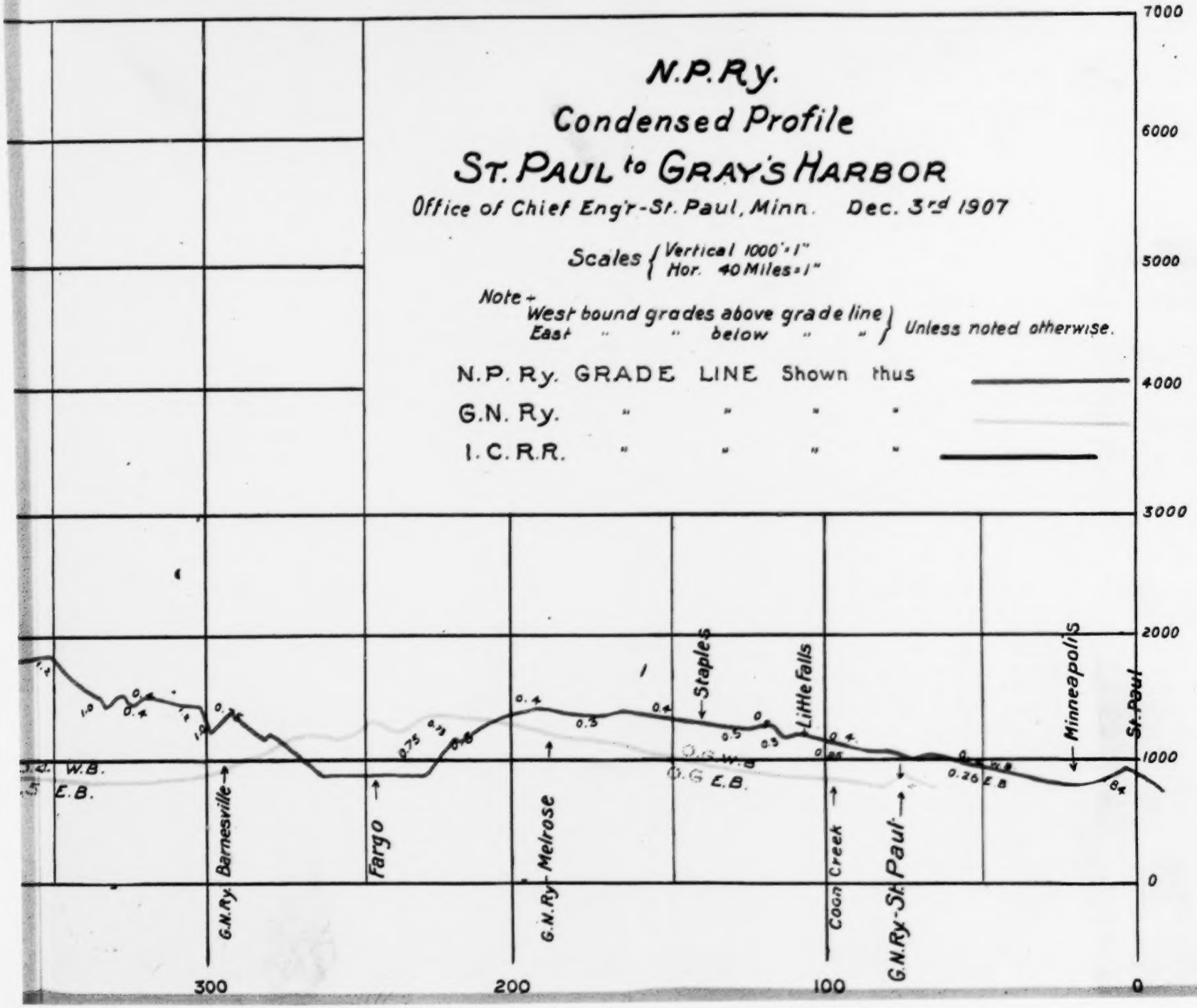
Scales { Vertical 1000'=1"
Hor. 40 Miles=1"

Note- West bound grades above grade line
East " " below " " } Unless noted otherwise.

N.P. Ry. GRADE LINE Shown thus ———

G.N. Ry. " " " "

I.C.R.R. " " " " ———



This profile shows the profile from Puget Sound on the west to St. Paul and Minneapolis on the east, for the Northern Pacific and the Great Northern. The Northern Pacific profile is the heavy black line; the Great Northern Railroad is the dotted black line. This also shows the profile from McComb, Mississippi, to Chicago, Illinois, of the Illinois Central Railroad. That is indicated by this broken dotted line. The elevation of McComb, for the purpose of making this comparison, is assumed to be the same as the elevation at Tacoma and Seattle. It is obvious, to look at that profile, that the volume of lumber business that is moving from Puget Sound to St. Paul has to be lifted up and down quite a number of ridges, quite a number of mountains. The same thing is true with regard to the Great Northern and the Northern Pacific. On the Illinois Central, in moving from McComb to Chicago, the list is shown on this profile. Here is some of it that is not so great as on the Northern Pacific and Great Northern roads. Now, there is no way that I know of that we can make actual arithmetical computations of the cost of doing the business on the Illinois Central or the cost of doing the business on the Great Northern or the cost of doing the business on the Northern Pacific; but there is a mathematical method of determining the resistance that must be overcome in moving business over a given line with given grades, and that is what we have attempted to compute in these calculations. We will assume, and we have assumed, that our men who operate the Northern Pacific are as good as the men who operate the Illinois Central, and that our costs for material are the same, and that our costs for labor are the same, and that we are as efficiently operated. We assume that all those elements are the same on each road. As a matter of fact where those elements are different the costs are against the northern lines.

The Illinois Central Railroad, from McComb to Chicago, is 825 miles long, and has 176 miles that is level. It has 172 miles of four-tenths grade, or 14 feet to the mile. It has 279 miles of sixteen feet to the mile. It has 78 miles of 22 feet to the mile; then it has 120 miles of one per cent. grade. Now it is a well-known fact, established by mathematical calculations, and physical tests, that the resistance that must be overcome in order to move a ton on a level road is six pounds. It is also well-known, established by calculation and by experiment, that the resistance to overcome and lift a ton up a one per cent. grade is, in addition to the resistance to be overcome to move the ton on a level road, 20 pounds—20 pounds more. So the

resistance to be overcome on a one per cent. grade would be 26 pounds. The resistance to be overcome up a five-tenths of one per cent. grade would be the initial rolling friction of six pounds plus one-half of twenty, or ten, which would be sixteen, and so on with each one of these varying grades. So that in order to find out how much of the 825 miles of the Illinois Central is equivalent to the one per cent. grade, which is the unit, we calculate the resistance to be overcome and the train miles to be moved, in order to move a given volume of business, after we have reduced that to a one per cent. basis. A given number of train miles on a one per cent. grade will do a good deal more work on a five-tenths of one per cent. or a four-tenths of one per cent. grade; so that on the two hundred seventy-nine miles —I will take 279 miles of five-tenths of one per cent. grade, because that is an easy example. On the Illinois Central there are 279 miles of five-tenths of one per cent. grade. On that the resistance is 16 pounds to the ton, to be overcome. Now, if this was a one per cent. grade, the resistance to be overcome would be 26 pounds to the ton. So the number of train miles needed on 279 miles for a five-tenths of one per cent. grade would be only sixteen twenty-sixths of that needed on the 279 miles of one per cent. grade, which would be 172 miles. Then you can take 279 miles of two per cent. grade and make the same calculation. Then you can make a calculation on the 176 miles of level grade, and you will find that that will be the equivalent of 41 miles of a one per cent. grade. Reducing the Illinois Central, therefore, to a one per cent. basis, you have four hundred ninety-one train miles of resistance, based on a one per cent. grade. That means, in order to move a given volume of tonnage from McComb to Chicago over the Illinois Central, you would have to take 491/825 using the one per cent. grade as a unit. By that I mean that the cost of operation in moving a train of a given number of tons over the Illinois Central Railroad would be the same as the cost of moving that same train over four hundred ninety-one miles on a one per cent. grade.

Now, we make that same calculation for the Northern Pacific Railroad. We take the distance from Tacoma to St. Paul, which is 1,909 miles. Of that distance, 341 miles is a one-quarter of one per cent. grade, or 11 feet to the mile; 662 miles are four-tenths of one per cent. grade; 127 miles are five-tenths of one per cent. grade; 125 miles are eight-tenths of one per cent. grade. We give, in this calculation, the balance, 654 miles, a one per cent. grade, although much of it is higher for

the reason that we operate it as a one per cent. grade, by putting on helper engines where the grade is higher than one per cent. In other words, if we come up to the foot of the grade, we put another engine on. Figuring these resistances in the same way, we find on the Northern Pacific Railroad, that it is equivalent to 1338 miles of one per cent. grade. So then, using the one per cent. as a basis, we would have 1338/1909, which is 1.18 of the Illinois Central, but it is not fair to say that the whole excess mileage is all extra cost, because it is well-known that some of the expenses are constant, and Mr. Wellington, who is an authority on railroad economics, has figured that all out, and shows that the excess cost for the extra train mileage, instead of being 100 per cent. is 49½ per cent. So we have 700 for the Northern Pacific and 995 for the Illinois Central, which makes an excess of 105. Now, we do not add that; we add 49½ per cent. of that, because we cannot say that all of that is extra. Add that, and it is 52 instead of 105. On the Great Northern there is a mileage of 1821 miles. Reducing it down to the one per cent. grade basis it makes 1363/1821, or 741/1000 of the one per cent., or 1.26 of the Illinois Central Railroad. Here again, however, it is not fair to add the whole excess, but we take 49½ per cent. of that, which is 77 to be added to the Illinois Central figure of 595.

Now, that would be the end of the calculation if it were not for two reasons. One is that both of the northern roads, in order to get over these mountain ranges have to put on to their trains additional engines, and they have a good deal of mileage of what is called helper districts. So, in all fairness, in trying to equalize with the Illinois Central you have to add something for that helper service.

Here, again, Mr. Wellington, who is a recognized authority, has made some computations.

The total helper mileage on the Northern Pacific Railroad is 99 miles on an eastbound movement. We have to put on one or more engines on every train going from Puget Sound to St. Paul to help the train over some of these bad places. Equalizing those 99 miles in the same way, as I have explained, reducing them to a one per cent. basis, it comes down to an equivalent in helper miles on the Northern Pacific, or 78.76 less than the 99 miles. You think it would be higher, having higher grades, but there are a number of districts where we have a grade less than one per cent. So we have 78.76 of equivalent helper districts.

On the Great Northern there are 37 miles of equivalent

helper districts. They do not have as bad mountain crossings as we do. Mr. Wellington, in his book, estimates that it would not be fair to take the whole helper mileage, but here, again, we only ought to take a certain percentage. We ought to take only .767 of it. We do that. We take .767 of the 99 miles of extra, or 60 miles helper service on the Northern Pacific, and .767 of 37 miles on the Great Northern, which would be 28 miles. These extra train miles have to be furnished in order to get this business over these grades and over these mountains.

Another thing that has to be overcome is the total elevation, the total amount you have to lift the train. The total elevation that the Illinois Central must lift their trains in going from McComb in Mississippi to Chicago, Illinois, is 3,245 feet. The Great Northern, in the movement from Seattle to the Twin Cities must lift their train 12,459 feet. The Northern Pacific railroad, in moving their trains from Puget Sound to the Twin Cities, must lift their train 15,493 feet. So the extra lift of the Northern Pacific Railroad over and above the lift of the Illinois Central is 12,248 feet between Tacoma and the Twin Cities, and on the Great Northern the extra lift is 9,214 feet. Here, again, you have to make a calculation as to the resistances, and this equalization, all of which can be figured out and has been figured out very carefully—results in an additional train mileage because of that extra lift of 196 extra equivalent train miles, the calculation being of the same nature that I have explained. That would be taken care of on a one per cent. grade if the one per cent. grade would run out indefinitely. Suppose we had 3,245 feet of Illinois Central elevation, and that is all we had, then it would be taken care of, but we have to go on and lift 12,000 feet more. We have to exert an effort to get it up 12,0000 feet higher.

So we have to add 196 extra train miles because of having to lift it 12,248 feet,—those are the figures I gave—up in the air. You could make the calculation for the Great Northern in the same way. That would figure 139 extra train miles. There are 139 equivalent extra train miles on the Great Northern for this lift of 9,000 feet more than the Illinois Central freight has to be lifted. There are 28 extra train miles where helpers are needed, making 168 extra train miles in the movement, from Puget Sound to the Twin Cities. Divide that into the total distance and it gives 92/100 of a train mile for a mile of road in addition to what I have already explained. So the total train miles on the Great Northern would be the 595—the Illinois Central unit, and as I have already explained, and 77/100

because of the greater amount of resistance to be overcome, and the 92/100 because of the lift, making a total of 767/1000 of train miles, or 129 per cent. of the Illinois Central.

I mean that that demonstration shows that if you assume we have like efficiency of management that we have like efficiency of coal, like efficiency of weather conditions, and no greater congestion, that the resistance to be overcome in moving a given volume of business from Puget Sound to the Twin Cities is 129 per cent. of the resistance to be overcome on the Illinois Central for a like volume. I cannot say what the costs are, because I do not know what the Illinois Central costs are.

If rates were to be based entirely on the cost of service, and we assume all these conditions to be alike, our rates might be per ton mile 129 per cent. of the rate on the Illinois Central. I think the Northern Pacific figures out 131 per cent., and the Great Northern 129 per cent. There are some other conditions that come in with the Northern roads. We all have our difficulties and I suppose the Illinois Central has its difficulties, but we know that we have some ourselves. We have very bad weather conditions ordinarily from December first, or even from the first of November, sometimes, until the first of April. For at least four months of the year—December, January, February and March—we have bad weather conditions. The normal rating of the locomotives is on a basis of hauling 100 per cent. of its capacity. That is what it hauls in good weather. When the thermometer goes down to thirty degrees, between thirty degrees and ten degrees, the locomotive, we calculate, hauls ninety per cent. of its capacity; between ten degrees above zero and ten degrees below zero it hauls eighty-five per cent. of its capacity; below ten degrees below zero we load it only seventy-five per cent. In very severe storms we only load it fifty per cent. I do not know whether we have more storms than the Illinois Central or not, but I do know that we have at least four months of the year of very severe weather, when we cannot get the full efficiency of our locomotives. That is an element which I cannot make any figures about, but it enters into the question.

Another important question in considering the cost is the capacity of the road or the lack of capacity. It is obvious if your road is very much overtaxed, that that will prevent the rapid movement of your cars and that ought to be taken into consideration. It is also obvious that on a mountain grade it takes more trains, even with helping engines, than on a level grade. That means more meeting points and more facilities.

So where the conditions are different I think it is not unfair to say that the differences are unfavorable to the northern roads.

So that on a demonstration, a mathematical demonstration as to the relative amount of resistance to be overcome, moving freight from Puget Sound to the East, and moving freight from the Gulf of Mexico to the north, that amount is 29 per cent. more for the Great Northern, 31 per cent. more for the Northern Pacific; and some of the actual unit costs we believe are very much higher in the case of the Northern Pacific than in the case of the Illinois Central.

In addition to these figures I have given you, it is to be borne in mind that a great deal of the lumber the Northern Pacific railroad is trying to handle does not originate at Tacoma. Instead of hauling it 1909 miles we have to go back about 50 or 60 miles, or perhaps 100 or 120 miles on other little roads, to get that lumber and bring it forward. So we have simply made this calculation from Tacoma as the initial point, and compared it with Seattle, the initial point on the Great Northern, and with McComb, the initial point on the Illinois Central.

The greatest elevation on the Northern Pacific is 116 feet to the mile; what is known at 2.2 per cent. grade. The same is true of the Great Northern. The highest elevation on the Northern Pacific is where we cross the main range of the Rocky Mountains, which is 5,565 feet. The highest elevation on the Great Northern is where we cross the main range of the Rocky Mountains, which is about 5,202 feet.

The progressive list is not involved in the first computation. You might say you have lifted it up and it is easy to roll the train down the hill, the one offsetting the other, but there is very little compensation in the down grade. The only thing you save on the down grade would be the fuel consumption. You have the same wear on the rails, the same wheel friction, you have the same train crew, the same equipment. We do save a little fuel, except on very steep grades, where I doubt if we save much. We have to pump air all the time on a steep grade, and as fuel is only eight per cent. of the train cost, not counting any other cost, it is almost a negligible quantity, because you know you do not have to save anything else, and it is offset in our case, we think, by the fact that on steep grades we have to use a great deal of braking power, and also by the fact that we have not added in our computations two engines in our helper districts, although, in a great many instances, we practically use three engines. To be on

the safe side we have made a computation on the basis of only one extra engine in the helper district.

We take the total number of miles from Tacoma to St. Paul, we say that a certain number of these miles are a one per cent. grade. We consider in this computation of grades for the east bound business only, the eastbound grades. We have taken the equivalent of the one per cent. grades up going east. The effort we have to overcome to get over the hills is what we have taken. We do not store anything up. Our total number of miles of different grades adds up the total number of miles from Tacoma to St. Paul. Over a great many of those miles we are going down hill and not uphill. We get at the amount of uphill grade in this way. Take that profile, of course we took a very large one, and we secured every mile of uphill grade. We did nothing with our downhill grades. We ignored them. We come in, say, between Billings and Livingston; theoretically, it is downhill from Livingston to Billings. As a matter of fact, there are little humps in that line all along there. Some of them, perhaps three-tenths per cent., some of them .25 per cent., and in some places 5 per cent; but when we try to run a train from Billings to Livingston it is loaded so it can get over .3 per cent. grade, if that is the maximum in that run. Therefore, for operating purposes that becomes a grade division of .3 per cent.; the engine cannot go over the whole distance unless it can go over the most difficult part, the .3 of one per cent. grade. We make this up by operating divisions; we load that engine at Livingston to the maximum capacity it will haul over the maximum humps between Livingston and Billings. We determine these grades from both the operations of our road and our profiles. We take our profile and we find where we are limited in getting the benefit of the downhill grade by having an uphill grade right in the middle. If the comparison were made not on the basis of operation but on the basis of units of resistance, the disparity between the northern lines and the Illinois Central would be much more. The resistance on a level grade is six points to the ton. That is the wheel friction. It is on the theory that it costs more to pull something uphill than it does to run downhill. Taking a division one hundred miles long, if it were downhill all the way except where you go uphill for short distances on a 3/10 grade, we would reckon that as a 3/10 grade proposition. I think that is as fair a comparison as you can make. I don't know of any way to get at it any more closely.

Another thing you have not taken into account at all in reference to resistance on the northern roads, and while I am not personally familiar with the Illinois Central, except that I think I made two trips over it, I know in a general way that their line is a pretty straight line. We have a great deal of curvature all through the western part of our road.

This lack of capacity is the most serious question in the successful operation of freight and overcoming the resistance necessary to move it. This method of reducing everything to the one per cent. comparative basis to figure the number of train miles is by a formula from Mr. Wellington's book. (Wellington, page 571.) The cost of the additional train mileage to handle a given business is 49-1/2 per cent. of the unit.

The cost of a helper mile is 76.7 per cent. of the train mile. (Wellington, page 602.)

Cross-Examination.

Since 1897, since the receivership, the owners of the securities of the Northern Pacific have received 4.23 per cent. per annum return. I mean that the payments for interest and dividends for the period since the receivership averaged 4.23 on the par of the stock and bonds issued. The bonds were issued on a basis of a fixed percentage. There has been no default on the interest on the bonds. The stockholders received seven per cent. dividends on their stock in 1907, 1906 and 1905. We commenced the seven per cent. dividends in 1904. In 1900 they were 3.48 per cent. on the stock; in 1901, 4 per cent.; in 1902, 5.48 per cent.; in 1903 they received 6.5 per cent. Since 1903 they have been substantially on a 7 per cent. basis. That is the only benefit the stockholders of the Northern Pacific have received out of its earnings and operations. I considered the improvement and betterment of the road, the increasing of the terminal facilities, the increasing of the shipment, the gathering together of the surplus, the creation of large funds to be of no value to the stockholders, but it is a value to the property and a value to the stockholders in that way. The stockholders have not received a dollar. That property is in very much better condition than it was.

Our gross earnings and net earnings have materially increased since the road was reorganized. Our earnings per mile and our load per car have materially increased. Some of

our grades have been reduced. Our percentage of empty car movement since 1900 has decreased.

Our percentage of operating expenses for the year ending June 30, 1907—operating expenses and taxes, because we have to pay those—my recollection is 58-1/2 per cent. of our earnings, and we have thought that would be pretty high. I think it was something like 9 per cent. higher than the previous year. We thought that was due, perhaps, to the very severe winter. In fact, we believed it was in part, and that when we got over those troubles we would be much better off. Yet for the four months of this fiscal year, from July 1st to October 31st, with the very best weather conditions we have ever had, with a large volume of freight, with a good many improved facilities, our operating expenses have gone up to 59.2 per cent. Let me get that exactly right for you. They have gone up to 59 and a fraction, as compared with 51 and a fraction for the same four months a year ago, or more than they were when we were loaded with this difficulty of the severe winter of a year ago, nearly 20 per cent.

We have been carrying a great deal of traffic on our road per mile of road; our cars have been doing service, I do not call it very excellent. We have done better than many. I do not think they carry near enough to serve the community. Our road is interested in the building of the North Bank Railroad. We hope that will relieve the congestion to some extent over the mountains. That was the object in building the road. We are also building from Spokane to Pasco. That will give us an alternate line from Portland into Spokane. The profile that I filed was based upon hauling over the Cascade Mountains. It was not based upon a river haul along the Columbia River. And based all on the new grade. There are a number of other improvements in progress between Spokane and Missoula that would greatly increase the capacity of our line. We hope to have them done by August of 1908. Our road has spent seventy-five million dollars in increasing the betterment of its facilities. I can best explain where they come from perhaps by giving you a brief statement of the sources from which the Northern Pacific has been able to get money to make these improvements. Some of it came from earnings. I will answer your question in that way. When the property was turned over to the company by the reorganization committee, they gave to the company five million dollars in cash. They gave them four million dollars of one kind of bonds, which were afterward sold

for two million million nine hundred twenty thousand dollars. They had a provision in the prior lien mortgage which allowed the company to expend one million five hundred thousand dollars each year and get bonds therefor. In addition to that, the company was entitled to use a certain amount of the net proceeds from the sale of its land grants for making additions to the property. Those were all the ways they had to get money. Their credit was exhausted. They couldn't borrow any more money. The stock was at a low figure. They couldn't issue any more stock. So the money that has gone into the Northern Pacific for the last ten or eleven years for the improvement of the property has come from that five million dollars of cash, the sale of four million dollars of bonds at two million nine hundred twenty thousand dollars. and the issue of this one million five hundred thousand dollars of bonds per annum, the net proceeds of the land department, and in acquiring certain properties that are now a part of the system, like the St. Paul & Duluth, certain other bonds were issued or assumed. We have a statement that shows every dollar that has been put into the capital and where it came from. I will be very glad to submit it if you would like to have it.

I am moderately familiar with the results of the operations of the roads as shown in these reports of the last few years.

It is not true that there has gone into maintenance of way and structures and maintenance of equipment over a hundred million dollars from operating expenses since 1897. I could not tell you as to the exact sum that has been appropriated from earnings and spent on betterments. We have taken and put into our property since the receivership, from the total net income, whether from earnings or from interest, or from anything, approximately thirty-two million dollars, in order to increase the capacity of the property so as to try and furnish an adequate amount of transportation. The sources from which we could obtain this money were limited. We spent every dollar we could get from bonds and land grants, and all the money that was turned over to the company, and in addition, in order to try to keep pace with the growth of the country, we put thirty-two million dollars of the stockholders money into the property. We would have been justified in paying it in dividends. We were not paying seven per cent. dividends during the most of that period. We were from 1903. Since 1903 we have been putting in all we could get to try to improve the property. Part of that

money came from earnings. It has been the custom of the Northern Pacific, in the betterment of its property, before finally accounting to profit and loss, to make an appropriation for improvements each year for a number of years. Some of that was in addition to the amount that was charged in the operating expense account to maintenance of way and betterment.

We paid seven per cent. dividends in the year 1907, and after the payment of dividends we carried to profit and loss something over twelve million dollars. For that year ending June 30, 1907, we charged out of that amount, or deducted from the twelve million dollars about six million dollars for depreciation of equipment. That left us with a credit to profit and loss of something in excess of forty-four million five hundred ninety-five thousand dollars. There was standing to the credit of the Northern Pacific Railway Company on June 30, 1907, to the credit of profit and loss account, in round numbers, about forty-four million five hundred ninety-five thousand dollars.

There were assets on hand in cash of nearly twelve million dollars. Then we had a large number of treasury securities, amounting to about sixteen million dollars. And construction advances to other railroads of about nineteen million five hundred thousand dollars, and other funds. I would be very glad to explain what you call the surplus account just as fully and frankly as I know how.

To save your time and mine and the time of the Commission and of these other gentlemen. Some of the figures you have stated are absolutely correct. What you call surplus, I take it, are these credit accounts, on the credit side of the balance sheet. The profit and loss item is forty-four million, five hundred ninety thousand, seven hundred and seven dollars, three cents. The reserve funds, of which you have spoken, right there on the balance sheet are six million, three hundred and nine thousand, seven hundred sixty-six dollars, eighty-six cents.

The insurance fund of which you have spoken is, $2,120,460.20 or a total of $53,025,934.09, which has been accumulated in the eleven years since the receivership from the excess of earnings over expenses, and from interest, rentals, dividends and any other sources of revenue the company has. Out of that, $31,766,855.59 has been put into fixed property in order to increase the transportation facilities needed to carry in part, the commerce of the country. It was not enough. We did not have enough of them but we did the best we could.

The balance between the $31,766,855.59 and the $53,000,000.00 is $21,259,078.50, which represents the excess of our current assets over our current liabiilties. Our current assets are some $37,000,000, and our current liabiilties are some $16,000,000; so we have $21,259,000 in excess. Of the $53,000,000 total, some $13,000,000 has been accumulated in eleven years by miscellaneous income received from sources other than the charges for transporting freight and passengers, leaving some $40,000,000 that you might say was received in excess of the expenses from transportation sources.

Now this reserve fund that you talk so much about, is $6,000,000. We are not ashamed of it. We are rather proud of it. We think it is a very wise provision. We have got a great big concern. It has only been eleven years out of the hands of the receiver, and the property is in good condition. It is not in as good conditions in spots as it should be; and from time to time we have set aside certain sums for rail renewals, for better bridges, for renewal of equipment, for depreciation of various sorts, and for the reason that in the last four or five or six years, particularly, we have not always been able to do as much on the road as we would like to to have done. Last year we would have liked to spend a good deal more money in renewing old ballast and doing a lot of things, but it was a physical impossibility. The time is coming, though, when we will do all that, and the reserve fund is a very proper protection, not only for the benefit of the stockholders, but for the benefit of the property in performing its functions to the public.

The insurance fund is $2,000,000. We have accumulated that by charging a certain amount each year to the cost of carrying our property, and charging the losses against it. We have been very fortunate. We have not used much of it, but we might have one big fire that would wipe out the whole of it. When the Stuyvesant Docks burned in New Orleans, the loss was several million dollars. The Great Northern had a fire at Superior the other day, and the loss was something like $1,000,000. We might have one bad fire sweep through Portland or Seattle, and cost us a lot of money. We do not think it is anything to be ashamed of, that we have a reasonable insurance fund to protect our property.

If you take this $8,000,000 away from the fund, I speak of, we have $13,000,000, as a working capital for the company, and it is not an excessively large working capital for a piece of machinery such as the Northern Pacific property.

It is all in our reports, and the Commission can figure it out. You can figure it out, or anybody can; but to save time I have tried to make it clear. We haven't anything to hide about it.

The $6,000,000 that we charged off by reason of the depreciation of equipment, we charged right against our income or profit and loss account and reduced the debit side of our balance sheet by a like amount. We reduced the book value of our equipment $6,000,000. That does not represent an actual transaction of any sort; simply a book value. We made a very elaborate calculation of our equipment from the time of the receivership to June 30th, 1907, and tried to apply the principles your body has laid down. You have not made an arbitrary rule as to percentages, but you said there should be an allowance for depreciation. We have followed that as near as we could. I think it is, in round figures, six per cent per annum. Some of the accounting men will know exactly; but we have bought the book value of our equipment down, as far as we know, to the first of July, 1907, in accordance with the principles laid down by Mr. Adams. It is a book of entry.

We had a balance to the credit of profit and loss on June 30, 1905, of $14,000,000. Our gross earnings that year were $61,000,000; our dividends and interest, and interest on deposit, was $1,700,000.

There is an old saying that you cannot have your cake and eat it too, you know.. That final balance sheet of June 30, 1907, was absolutely correct. It shows the total results of the properties since the receivership, absolutely, and it shows, as I have tried to state, that, taking these accounts that you refer to as surplus accounts, there has been a total accumulation from various sources, some of it from earnings, some of it from those miscellaneous items you have read, in excess of what has been paid for taxes, interest and dividends, of some $57,000,000. That is represented, as I have explained to you. $2,000,000 of it was put into fixed items of the property that we could not dispose of if we wanted to. It has been added there, and the balance is the excess current assets over current liabilities.

The Northern Pacific has a large and valuable land grant left yet, and the proceeds of that land grant go to create a sinking fund for the retirement of bonds. We retire half a million of bonds, approximately, each year, and the balance has to go in the property, in the way of fixed improvements. In 1906 we sold what is called scrip at $8.00 an acre. When

I went with the company we stopped the sale of land because we thought it was unwise to continue the sale for the time being. In connection with the land grants there were valuable coal lands. The empty haul west was not the sole cause for this advance in rate. It is one of the causes. I think the advance will put us in a much better position to bear the burden of taking empties, than we were in before. Even on a 50 cent rate, I am not clear with the way our expenses have increased, that we would be justified in hauling empties all the way to the coast in order to get lumber. I think that the movement of lumber from the coast east since January 1, 1907, has not been quite as great as last year, but I have not the figures. I think the snow blockade and the car shortage, and one thing and another cut it a little.

The Oriental tonnage is very small on the Northern Pacific. For the 15 months ending June 30, 1907, the west bound Oriental tonnage was 46,000 tons. It has been steadily decreasing in the last four years. The east bound tonnage is rather less, I think, than the west bound. We carry the Oriental tonnage at a cheap rate per ton mile. My judgment would be that it would be below the average rate per ton mile on our business as a whole. The lumber tonnage has exceeded our capacity to handle the traffic for the last 18 months. It is one of the principal industries of the State of Washington, and has contributed, I think, very greatly to the development and prosperity of that state.

I presume we have had the direct benefit of that in having a larger amount of west bound tonnage of goods coming in to supply those engaged in the lumber business and its allied industries. Miscellaneous traffic, of course, is what we live on.

Our own coal mines supply us with a part of our fuel, not all. I think our charge for labor on the whole is higher than in any other part of the United States, except perhaps on some of the Southern Pacific Lines in California and Arizona. Our average operating ratio has been below the average.

The increase in cost is one of the reasons why I think this rate should be advanced. General increase in cost in conducting the railroad business. The empty car haul contributes to the increase in cost. Also the competition of traffic. The fact that we have more than we can handle. These conditions do not exist today. We have a very good movement of east bound business from the Pacific Coast today. We think the lumber business for the lost two years has

been so great that it has added to the cost of our operations and hampered us in transporting business, and if it had been somewhat less, the results to us would have been much better. We did not try to limit it. We did everything we could to help it. We wanted the lumbermen to go on and do their business. Just now that condition has been relieved. I think the lumber is entitled to a very low rate. I cannot ascertain the cost of carrying lumber as a commodity. I cannot actually tell whether we carry it below the cost of the service or not. The building of the North Bank Road from Spokane to Portland will very much reduce our grade on our east bound lumber movement. We shall probably send that way all business from what is called the Gray's Harbor district and south bound district. That comes in at Chehalis. If we take that proportion of our tonnage around that way we will relieve the congestion going through our tunnel in the Cascade Mountains. We won't add to the efficiency of the tunel, but we won't have quite so much business to go through. Taking away business from it does not increase the efficiency of the tunnel.

The cost of handling the traffic of one character may be very much greater than the cost of handling traffic of another character. If the traffic is of such a character that you could combine it into heavy trains and move those heavy trains long distances as solid trains, you can move the traffic very much cheaper than in the case of local traffic, in the case of short haul traffic. Not only that, but you are also able to give the public a great deal more transportation, as you have fewer trains to move on the road. And the lumber traffic, I suppose is all in solid trains, almost the entire distance across the continent. We generally have some other cars in the train; but in the main we have a great many trains that are principally lumber. I think the cost of handling grain, the cost of handling coal, the cost of handling ore, or any of these heavy commodities, is no higher than the cost of handling lumber. That depends a great deal upon the conditions under which they are handled. If they are handled in solid train loads, so that you can drop 50 ton cars, as the Baltimore & Ohio does, down to Cumberland, that is first rate business. You have got to take all the conditions into consideration.

The train mile cost is arrived at by charging up to the cost of freight service those items that are obviously for freight accounts. Say the wages of a freight engineer, or the fuel of a freight engine. The indivisible items, like the salary of a

station agent or the pay of a train dispatcher, or the maintenance of the roads, are divided on the basis of the number of freight train miles and the number of passenger train miles. It is purely an arbitrary division. Nobody can say that it is right or that it is wrong. You add all those expenses together, and divide them by the total train miles, and you get the so-called cost per train mile. The operating expenses per train mile includes both passenger and freight trains. The operating expenses per train mile of $1.46 is, I presume, the cost of operating all our trains, freight and passenger and everything else The cost of the lumber train mile might be greater in certain districts, and it might be less in others than the average. We had a train out of Tacoma not long ago that ran away on the mountain and cost us $35,000. You have got to take your average for the whole year. We had serious washouts out in the Green River Canyon on the west slope of the Cascade Mountains, that cost a number of thousand dollars. You have got to apportion that to your freight train cost if you are going to try to get at it. Of course—you are right—you could take the wages of the engineer and fireman and arrive at it. It would be a possible thing to do, but it would not, in my judgment, be a fair cost.

There has recently been some decline in wages of what you may call common labor, but there has been no decline so far as to be effective in the prices that we are paying for materials. Our tie contracts that we made for 1908 are on just as high a basis as in 1907. I doubt very much whether the wages of the men in what are called the organized trades, will show any reduction unless times get very much more serious than they are now.

I think there will be a fall in some supplies. I hope there will, because if there is not, I don't know how anybody is going to get out, in the railroad business.

The ordinary arrangement of the ordinary trades in our country is that they are supposed to be for a year; but either side can give thirty days' notice in most of them, and call for a hearing, call for a negotiation either for an advance or for a reduction. Of course for the last few years we have had notices in between the yearly dates for advances, and have had to make them, more or less; and as already stated, I doubt if any reductions can be made unless the general conditions in the country are very much more serious than they are today. I don't think the labor organizations will stand for it. I don't know that they ought to.

An aggregate train load of various commodities, each loaded as heavily as lumber, would cost as little to move per ton per mile as lumber in train loads. We do not as a rule move the same solid train of lumber, or any other commodity, from Tacoma to St. Paul, keeping it in a solid train load all the way through. There may occasionally be such a train. We could not take a train over our road from one end to the other, loaded to the full capacity of the engine on some one particular division. After our cars leave Tacoma going east they go up to Auburn, and then east through the Cascade Tunnel to Ellensburg. When we have a heavy business we are able to make up a full train at Tacoma and another full train at Seattle. At times we consolidate at Auburn. We try to run a full train from Tacoma to Ellensburg. Then we run from Ellensburg to Pasco. Sometimes we do switching at Ellensburg if we have a bad car to take out, or we may have something to pick up. We can take more tonnage from Ellensburg to Pasco than we can from Auburn to Ellensburg. Pasco is on the east side of the mountains, where the Columbia river begins to turn north.

After we get these trains started, except these engine divisions, and the necessary switching which takes place at the engine division to adjust the train for the next engine, the mere increase in distance in the haul does not increase our expense to any extent.

In the lumber business there is an element of expense which does not exist in any other business. We have very often to switch out carloads of lumber because of the fact that the load has shifted, and we have to put the car on the side track and arrange to load, put it in order, so that the car will run safely. After we get this train load of lumber over the Ellensburg division the switching is just to put out cars and switch in cars, in order to make up the correct tonnage that we can take over the division behind our engine. Therefore, our expenses are not decreased materially per ton per mile because it goes farther. The grain business possibly does not collect in as many heavy trains as the lumber does, that is when there is a heavy movement of lumber. We gather up the grain on the branch lines and take it into the main line, and then we run solid trains on the main line to Duluth or Minneapolis. The fact that there is too large a tonnage and not enough speed on our road has affected the transportation cost to some extent.

In 1903 the train movement was 94.25 miles per day, and in 1906 it was 86 miles. That decrease in the car movement increased our expenses, because we had to have more space for cars to stand around, more yards to hold them. We had to have a larger equipment to do the given volume of business, and that meant more car repair and more inspection.

The maximum of loaded cars west of the Cascade Mountains in the winter of 1907, waiting to be moved, was about 5,000. These cars would be about 45 feet long, so that we had about 5,000 times 45 feet, that much space occupied with cars on side tracks west of the Cascades. We had no shortage yards in which those cars were placed; and, I am sorry to say, they were strung all the way from South Bend to the top of the Cascade Mountains. At Gray's Harbor the side tracks were full, at Tacoma the side tracks were full, and at Seattle the yard was full of those cars. We do not put side tracks in for the purpose of storing these cars on them. Our side tracks are either house or team tracks at stations, or passing tracks. These cars had to stand on passing tracks to a large extent. That increased our expense because it made it more difficult to get trains over the road. Instead of having passing tracks, we will say, every five miles or so, those tracks being occupied by cars, the trains might have to run ten or fifteen miles to find a place to meet, and in that case one train would have to wait until the other one got there, and there was a great deal more dead time. That led to overtime on the part of the employes. And there was increased consumption of coal, and we did not get the benefit of the coal while it was being burned to the same extent. An engine burns coal on the side track, and that engine has not been performing any service. Of course, we lost the time and usage of our cars.

We had some congestion in North Dakota during the very severe snow last year, during that bad weather. This reduction in the speed of trains was not an attempt on our part to reduce our expenses by reducing the speed. It led to an increase of expenses rather than a reduction.

At the time of this congestion in Washington, the weather accentuated it very much.

NATHANIEL B. HINCKLEY (Record page 1712), testified as follows:

I am a public accountant. I have had about twenty-three years experience in railroad accountings. I was the assistant general auditor of the Chicago, Burlington & Quincy Railroad; the auditor of the Chicago, Burlington & Northern Railroad; assistant general auditor of the Chicago and Great Western; auditor of the Mason City and Ft. Dodge Railroad. I have prepared figures and statements for use in this case. All but one statement were prepared from the statements of the Interstate Commerce Commission; that one was prepared from the books of the railroad company.

Hinckley Exhibit No. 1, offered and received in evidence, was a statement showing the tons of freight that moved one mile and the passengers carried one mile, and the percentage of passengers to freight on the Northern Pacific, Great Northern, Burlington, O. R. & N., and the Illinois Central. That statement is correct to the best of my knowledge and belief.

HINCKLEY, EXHIBIT 1.

PERCENTAGE OF PASSENGERS CARRIED ONE MILE TO TONS OF FREIGHT MOVED ONE MILE, YEAR ENDING JUNE 30, 1907.

NAME OF RAILROAD CO.	Tons of Freight Moved One Mile.	Passengers Carried One Mile.	Percentage of Passengers One Mile to Tons of Freight One Mile.
Northern Pacific	5,504,444,098	722,745,259	13.11
Great Northern	4,920,792,956	418,678,415	8.50
Chicago, Burlington & Quincy	7,114,843,286	892,747,607	12.5
Oregon Railroad & Navigation Co.	758,684,940	126,440,471	16.66
Illinois Central, entire line	6,592,022,619	569,931,666	8.64
Illinois Central, south of Cairo	2,619,749,986	179,258,797	6.87

From reports to I. C. C.

I have a statement showing the proportion of passenger earnings to gross earnings on those various railroads. That statement marked Hinckley Exhibit No. 2 was offered and received in evidence. That statement is correct.

HINCKLEY, EXHIBIT 2.

PERCENTAGE OF PASSENGER EARNINGS TO GROSS EARNINGS FROM OPERATION, YEAR ENDING JUNE 30, 1907.

NAME OF RAILROAD CO.	Gross Earnings from Operation.	Passenger Earnings.	Proportion to Gross Earnings.
Northern Pacific	$68,447,454	$19,192,008	28.03
Great Northern	50,208,035	12,381,184	24.66
Chicago, Burlington & Quincy	81,705,307	23,348,932	28.5
Oregon Railroad & Navigation Co.	12,942,815	3,764,857	29.1
Illinois Central, entire line	57,301,565	13,664,867	23.67
Illinois Central, south of Cairo	21,853,109	4,727,792	21.63

From reports to I. C. C.

Hinckley Exhibit No. 3, offered and received in evidence, is a statement showing the cost of moving a loaded freight car one mile by dividing the mileage of freight cars into the total of operating expenses and taxes on all these roads.

HINCKLEY, EXHIBIT 3.

COST OF MOVING LOADED FREIGHT CAR ONE MILE, YEAR ENDING JUNE 30, 1907.

NAME OF RAILROAD CO.	Mileage of Loaded Freight Cars.	Operating Expenses.	Taxes.	Total Operating Expenses and Taxes.	Cost per Loaded Freight Car Cents.
Northern Pacific	309,504,759	$37,601,938	$2,398,719	$40,000,657	12.90
Great Northern	246,084,240	29,446,866	1,882,699	31,329,565	12.73
Chicago, Burlington & Quincy	405,305,274	58,184,494	2,814,057	60,998,551	15.
Oregon Railroad & Navigation Co.	37,714,307	6,969,822	311,867	7,281,689	19.3
Illinois Central, entire line	370,906,909	38,538,639	2,217,817	40,756,456	10.9
Illinois Central, south of Cairo	153,716,814	16,238,086	561,710	16,799,796	10.2

From reports to I. C. C.

Hinckley Exhibit No. 4, offered and received in evidence, is a statement showing the tons of freight moved one mile per dollar paid for fuel upon the level divisions, and the mountain divisions of these various railroads, involved in this case, and upon the lines of the Illinois Central Railroad south of Cairo.

HINCKLEY, EXHIBIT 4.

COMPARATIVE STATEMENT TONS OF FREIGHT MOVED ONE MILE PER DOLLAR PAID FOR FUEL, YEAR ENDING JUNE 30, 1907.

NORTHERN PACIFIC RAILWAY CO.

MANDAN TO BILLINGS Miles 441.45			HELENA TO TROUT CREEK Miles 250.06			ELLENBURG TO PORTLAND Miles 271.96		
Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar	Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar	Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar
755,348,583	$644,901.02	1,171	572,048,628	$563,617.69	1,015	450,473,506	$625,385.12	720

GREAT NORTHERN RAILWAY CO.

ST. PAUL TO BRECKENRIDGE Miles 212.65			LEAVENWORTH TO SEATTLE Miles 151.97		
Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar	Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar
427,659,503	$304,396.50	1,405	179,918,089	$394,291.42	456

OREGON RAILROAD & NAVIGATION CO.

PORTLAND TO UMATILLA Miles 187			UMATILLA TO HUNTINGTON Miles 217		
Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar	Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar
287,204,040	$282,691.41	1,015	285,259,627	$555,003.96	513.9

ILLINOIS CENTRAL RAILROAD CO.

ENTIRE LINE			SOUTH OF CAIRO		
Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar	Tons Moved One Mile	Amount Paid for Fuel	Tons Moved One Mile per Dollar
6,592,022,619	$3,845,718.00	1,714	2,619,749,986	$1,486,979.00	1,761

From statistical records of railroad companies.

HINCKLEY, EXHIBIT 5.

TONS OF FREIGHT MOVED ONE MILE PER DOLLAR PAID FOR FUEL, YEARS ENDING JUNE 30, 1898 TO 1907, INCLUSIVE.

	1898 Tons	1899 Tons	1900 Tons	1901 Tons	1902 Tons	1903 Tons	1904 Tons	1905 Tons	1906 Tons	1907 Tons
Northern Pacific Ry. Co	1590	1725	1909	1409	1416	1292	1181	1205	1148	922
Great Northern Ry. Co	1047	1022	909	761	888	1047	909	1205	1209	1029
Chicago, Burlington & Quincy Ry. Co	1277	1294	1281	1119	1157	1181	1035	1154	1224	1341
Oregon Railroad & Nav. Co	717	693	753	674	737	732	703	742	705	591
Illinois Central R. R. Co., entire line	2275	.....	.....	1838	1839	1815	1525	1357	1827	1714
Illinois Central R. R. Co., south of Cairo	.....	.....	.....	2015	2008	2016	1546	1697	1909	1761

From reports to I. C. C.

HINCKLEY, EXHIBIT 6.

TONS OF FREIGHT MOVED ONE MILE PER DOLLAR PAID FOR MAINTENANCE OF WAY, YEARS ENDING JUNE 30, 1898 TO 1907, INCLUSIVE.

	1898 Tons	1899 Tons	1900 Tons	1901 Tons	1902 Tons	1903 Tons	1904 Tons	1905 Tons	1906 Tons	1907 Tons
Northern Pacific Ry. Co	515	515	452	464	487	542	562	602	706	607
Great Northern Ry. Co	632	552	488	482	606	722	603	756	781	677
Chicago, Burlington & Quincy Ry. Co	563	527	461	454	523	555	536	613	594	513
Oregon Railroad & Navigation Co	298	272	446	430	463	572	470	466	484	382
Illinois Central R. R. Co., entire line	630	.....	.....	684	787	878	922	915	912	965
Illinois Central R. R. Co., south of Cairo	.....	.....	.....	850	867	981	1065	822	759	830

From reports to I. C. C.

Cross-Examination.

This statement showing the cost of moving a loaded freight car is intended to show only relatively the approximate cost of moving a loaded freight car. It includes the passenger expense. Moving empty cars is about the expense of loaded cars. Moving company freight is an expense upon the commercial business. This table, intended to show the freight car movement one mile and its cost, is a division of the mileage of the loaded freight cars into all the expenses of the road. That shows relatively the cost of moving that freight car one mile between the different roads. That is the same computation with each road. I did not adopt any method of segregating passenger earnings and passenger costs from freight earnings and freight costs. I acted on the presumption that on each road the passenger cost and freight cost would bear a certain relation to each other. I did not endeavor to segregate the passenger cost, presuming that relation to be fixed, but treating everything as if it were really freight cost, I found the relative cost on the several roads was as my figures indicate. If I had adopted a certain percentage for passenger cost and subtracted it, my figures would then have borne about the same relation. So this shows relative cost on these various roads.

W. J. BUCKER (Record page 1724), testified as follows:

I reside in Everett, Washington; am interested in the manufacture of lumber and timber and am in logging operations. I have lived on the Coast about twenty years, and have been interested in timber and logging practically ever since I have been there. I first engaged in the lumber business three years ago at Lake Stevens, or Hartford, on the Northern Pacific, about eight miles east of Everett. That place is not on tide water. There are no other railroads in there except the Northern Pacific.

We own our own timber. The timber that we have manufactured in the last two years we have bought within the last three years. It is largely merchantable No. 2 timber, that is the logs. The most of this is logged into Lake Stevens, a lake about two miles square. The timber that we have manufactured has been logged into that lake. Our mill is situated near the lake, and our timber is adjacent to the lake. We

bought most of it in the last two years. We bought most of it by the acre. Generally I had the timber estimated before I bought the land. In my case, the estimate was as near as I could get it. We estimate generally the standing timber down to about 16 or 18 inches in diameter. We took into consideration the hemlock. You cannot tell until the timber is cut very closely what there is on a piece of land. If you cut it very close, it is surprising the amount of timber—for instance, I bought within 18 months 160 acres of timber land that I estimated had 6,000,000 feet of timber on it, and the seller estimated it had 8,000,000 feet. We compromised on 8,000,000. We have cut enough of that to know that it will cut 12,000,000. But we paid the man at the rate of $1.00 a thousand for it on his estimate. In another case, we bought 325 acres of land. I thought that it would cut probably 6,000,000 or 7,000,000. There was much down timber, especially cedar, and I paid $6,100. We have cut off 13,000,000 feet and there are 2,000,000 or 3,000,000 feet more on it, and we have sold the land since then, reserving the timber, for a little over $10,000. That timber did not cost us very much per thousand. We have men that are associated with us in logging. We usually advance the funds to pay for their logging equipment, and then we make a contract with them to deliver the logs into the water. We have a man by the name of MacDougal, who furnished his own equipment. He put in 3,000,000 feet and we paid $2.75 a thousand for it. That was in 1905.

That is where he simply reached back from the water 600 or 700 or 800 feet, and just logged the front of that timber. In that same tract we put in about 2,000,000 feet more, that cost us $3.00. Then we have contracted for the lumber that extends back a mile. We paid $4.25 for that. There are probably 10,000,000 feet of that, and that is included in this 13,00,0000 feet I spoke of. We pay the same price for logging cedar that I paid for logging fir.

And the same for logging, flooring logs, as is paid for merchantable logs. There is no difference in our contract at all.

This man that put in the logs for $2.75, I know what he made. He was a man that drank and we did not trust him in the matter of labor, so we paid all of his bills, and it took him about ninety days to put in three million feet, and we paid him, after paying all of his obligations, $1,100.00.

The logs that we have manufactured in the year 1906 did not cost us to exceed $4.00. We were only manufacturing

shingles in 1905. The logs we manufactured in 1907, I would say cost us $4.75 or $5.00. That includes stumpage. That is, stumpage that we bought three years ago. Our average cost of manufacture for the years 1906 and 1907 has been about $3.50. That is for all grades of lumber that we manufactured. We have manufactured cedar into shingles but not into lumber. We might have made a little cedar siding, but not of any consequence. We have had a dry kiln and planing mill. We put as little through the dry kilns and the planing mills as we can. We like the timber end of it better. Our cost of logs delivered in 1906 at the Pond was $4.00 and the cost of manufacture in 1906 was $3.50, not to exceed that.

The average price we received in 1906 was about $13.00. We sold our lumber generally to brokers. It all went over the central west; quite a percent of it to Cleveland; it went to Duluth and some to Buffalo. We have manufactured shingles since early in 1905 or possibly the latter part of 1904. And the business, we think, has been fairly profitable. We have owned our own cedar stumpage. It has cost us the same as for the other logs, about $4.00. We have a contract for manufacturing our shingles; for instance in 1906 we paid 60 cents a thousand for manufacturing, and this year, the coming year, our contract will be 65 cents a thousand. That is for manufacturing and delivering f. o. b. cars and keeping the mill in repair. We furnish to the contractor the use of the mill and he keeps it in repair, except the natural wear and decay. Counting in the value of the use of the mill and the cost of the logs, and the price we pay our contractor, the cost of making shingles to us in 1906 was one dollar. That includes the stumpage. In 1907 we paid five cents more for manufacturing, and our logs will be a little bit higher.

We have sold shingles since I have been in the business for $1.25, I think that is as low as we ever sold, and we have sold as high as $3.00 for Star-A. During the period that we were manufacturing, we sold our shingles generally to brokers. Of course, our lumber output we have sold to brokers, but we have some private contracts. For instance, we furnished the Carbolinium Wood Preserving Company, of Portland, 50,000 ties, and they probably had another order prior to that. That was a local order outside of brokers, and we have sold some, probably a million feet, or a couple of million feet, to contractors in Seattle and Everett.

When this old rate was put in in 1893 or 1894, I know that I bought shingles. We built the Court House in Everett, and I bought the shingles that covered that, delivered for 85 cents a thousand. They were green. They were not put through the kiln.

Those shingles were manufactured to order after I purchased them. The price of cedar logs has increased materially since 1894. In 1893 or 1894 we bought material for putting in 18 or 20 miles of blind drains that required two by twelve cedar, random lengths, on a farm that we have south of Everett. It took several hundred thousand feet of it, and we bought that material of the Northern Lumber Company at Everett for $6.50 delivered on board scows at a point three miles above the mill on the Snohomish river. During the summer of 1907 I have heard that cedar logs were about as high as $18.00 a thousand. I do not think there have been many sold for that. We get ten thousand shingles out of a thousand feet of cedar, but it makes a difference how they are manufactured.

Cross-Examination.

No man knows what his stumpage costs him until after his cut. I think it is largely guess work with the Weyerhaeuser Timber Company. I do not think they can tell within a great many hundred thousand feet on a claim, for instance. Timber is generally sold on estimates. The State of Washington sells the state timber on a cruised estimate. I presume the Continental Lumber Company made all their purchases on an estimated cruise. I do not think the purchaser knows what he is getting, that is, in thousand feet. There would be quite a difference in the matter of cutting. For instance, where the mill man owns his own timber and cuts it, it makes a great difference. The great waste in stumpage has not been in the top, it has been in the stump. We have our fallers cut close to the ground. We are operating on Lake Stevens. We have one railroad that we put in between five and six hundred tons of sixty-pound steel, running up north. This $2.75 is a tract that was being logged right on the edge of the lake. That makes a very material difference. We used one yarder in logging there. Not a road engine at all. If we had had to use a road engine it would have added considerably to the cost of logging. I do not wish the Commission to think that that was the customary price of logging

there. I think that was very low. I think a fair price for logging, say a mile from the lake, for the timber up to a mile from the lake is about $4.25, which we were paying. A mile from the place of operation is pretty close. When most of the mills are manufacturing timber it is brought in by rail quite a good many miles, or brought in by water. The tract of timber that I referred to cost a dollar on the seller's estimate, but in reality that stumpage costs us 66-2/3 cents. He believed that he was getting a dollar for his stumpage. I should think a dollar would not be an unreasonable price to pay for stumpage in that country. I think a dollar a thousand for stumpage is fairly low. I think stumpage would bring more than we paid for our stumpage, but we cut it very close. For instance, we have cut a very great many shingles out of stumps that we have cut, that were logged a great many years ago.

Our price of manufacture for the year 1906 was $3.50. Our capacity is 100,000. Our mill is a circular mill. That price includes on board the cars. We figured our stumpage for 1906 at $4.00. That included the logs. It costs us by contract 60 cents to manufacture shingles and our stumpage cost us forty cents in 1906. So our shingles cost us a dollar a thousand. We had the estimates of several manufacturers and none of them ever estimated lower than nine thousand shingles to a thousand feet of logs. In logging the timber for which we paid $2.75 a thousand for having it put into Lake Stevens, I do not think logged back further than eight hundred feet. That is a fairly level country. It makes a great deal of difference in the cost of logging as to whether the country is broken or level. There are sections of land in Washington where you can log one-quarter section probably for half of what you might another on the same section. And some you cannot log at all at this time at any profit on account of its broken condition. We have contracted at $4.25 per thousand for logging a mile or a mile and a half back from the lake, I believe.

EVERETT G. GRIGGS, being recalled, further testified as follows (Record page 1754):

I am president of the Pacific Coast Lumber Manufacturing Company. That association never gets out price lists. I can furnish our average prices for the years from 1903 to 1907 from our books, the average price at which we sold all our lumber. The average price that we are paid for our lumber clear through, and the total year's business, is always averaged, and we handle five or six different markets. We handle all grades of timber. The Puget Sound and Portland people handle different markets than we do, and I am not altogether familiar with what their prices are. I think the range of prices at Portland on common lumber has been a little higher in a good many instnaces than the range of common lumber at Tacoma, depending on local conditions and the U. P. connection there. I presume in the export market we compete with Portland.

JOHN A. REA, a witness for defendant, testified as follows (Record page 1764):

I reside at Tacoma, Washington, I have lived there and in Olympia about seventeen years. I am in the general realty business, mortgages and bonds. I have dealt in timber lands since 1890 all through the center of Western Washington, from the Cascades to the Coast.

My operations have extended down into Cowlitz County, Pacific County, practically to the Columbia river, and north up to what I think is called the Skagit line in Skagit County. My operations have extended over the territory occupied by the Southwest Lumber Manufacturers' Association.

In 1890 and 1891, there was more or less timber buying and selling associated with what we called the big land and lot boom, at that time. From 1891 down to 1897 practically nothing was doing. In 1897 I noticed a little buying, at very low figures, about the time of the Alaska boom, or the Alaska gold discoveries. Then a little in 1898, 1899, 1900, 1902 and 1903, but no marked advance in stumpage or acreage until 1905 and 1906, culminating in 1907, and practically little or nothing doing now. There was a great deal of Government land taken up all through there, during that period down to

1900 or later, two or three years, at $2.50 an acre, probably a dollar an acre more would cover all expenses, or a total of three dollars and fifty cents. You could sell claims for six, seven, eight, nine and ten dollars an acre even as late as 1904. Since 1904 the prices have advanced. I will illustrate it by the sales of the State of Washington for one year at auction down to September 1, 1907, wherein they sold timber, 19,081 acres of state land for the total sum of $357,000 or an average of $18.72 per acre. The State of Washington always gets the best prices, as a rule, because the land is sold at auction and sold to users and not to speculators, and for spot cash. That is down to September of this year, at the very best market, and scattered all over the State of Washington wherever the user wanted to use some timber. They are right up against it, and it has to be removed within three to five years. This was down to September 1, 1907, part of 1906 and part of 1907. Since September 1st the market has fallen off. The state cruises the land, at least they have professional cruisers that go on the land for a day and a half or two days and turn in a report to the state. The state then puts a value on the timber and then it is put up at auction, and it is immaterial what the value is, because it goes to the highest bidder. At $18 an acre, you can see what the price of 160 acres would be.

The Weyerhaeuser Timber Company is the largest holder of timber in the State of Washington. The Weyerhaeuser Timber Company on the first day of this year owned 1,400,000 acres and a little more. Mr. Long showed me a statement showing that he had a little better than 1,400,000 acres in the two states. He did not segregate it because I did not ask him. I said, "Did you buy any timber last year " He said, "I sold more than I bought. I sold 44,000 acres." So they approximately have less now probably than 1,400,000. I divided that and made 1,200,000 acres in the State of Washington, and apportioned it for twelve counties; and if I counted the townships correctly it would be about one-seventh of the timber in those townships. Theirs is the largest concentration. I can illustrate that again by our own County of Pierce, where I know more about it, where I know it specifically. Tacoma is the capital. In the County of Pierce they own 108,000 acres, which would be approximately five townships, out of forty townships or more, as this map will show. Also in that county, according to the assessors' return, the

St. Paul mill has 69,000 acres. The Griggs mill, yes. The Far West Lumber Company owns about 7,000 acres. The Tidewater Lumber Company, Mr. Royse told me he had 400,000,000 feet, whatever that means, and the White River Lumber Company about 5,000 acres. Nearly all our large mills there have their own stumpage. I think the Tacoma mill has its stumpafe. Mr. Vilas of Wisconsin, ex-Senator Vilas, has 7,788 acres in that county, that his buyer told me probably did not cost them to exceed ten or under consideration—the West Side Lumber Company of Olympia.

Every man who buys timber on an estimate thinks that it will overrun when he cuts it. In other words, if they have a six million claim it will cut probably eight millions. That is universally understood. I sold timber to the Continental Timber Company in half a dozen different counties. It was generally known through the real estate dealers that they were in the market for timber, and we guessed that it was probably on the surveyed route of the Milwaukee road in several instances. They paid four, five and six thousand dollars for quarter sections. Mr. Hunter went into a tract of several thousand acres and spent a day or two there, came out and said he was satisfied and took it. It was a competitive race for the timber. He paid from ten dollars up to twenty-five dollars an acre. This Mr. Hunter is an inside man of the Chicago, Milwaukee & St. Paul Railway Company. The State of Washington sells its timber for cash, and reserves the land. The land is of no value. The policy of the state has been only to sell to actual consumers, and a number of statutes have been passed requiring the removal of the timber within from three to five years.

Cross-Examination.

I do not know of my own personal knowledge whether the statements that I have made of the purchase of 19,000 acres at $18.22 an acre is correct or not. It costs a great deal of money to make an examination of timber lands. It costs one or two hundred dollars to examine a quarter section if it is done right. They very frequently take it up on a very slight cruise. To inspect a quarter section, that is forty miles from a railroad would take as much as ten days' time if it was done right. My experience is that it is never done on that basis

at all. It is very seldom that they have gone into details. Generally there is not over a two days' cruise.

The Continental Timber Company bought all over the state everywhere.

W. G. JOHNSON, witness for defendants, testified as follows (Record page 1788):

I am assistant comptroller of the Northern Pacific, and have prepared statements showing the expense of operation of the Northern Pacific Railway Company. My first statement is a statement of the cost of maintaining way and structures for the fiscal years for 1898 to 1907. The average price of rails in 1898 was $19.11, and in 1907, $29.49, an increase of $10.38 or 34 per cent. That statement shows that the percentage of maintenance of way and structures in 1907 was practically the same as it was in 1898.

(Said statement was offered and received in evidence, and marked "Johnson Exhibit No. 1.") (Record page 1778.)

JOHNSON, EXHIBIT 1.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING RATIO OF MAINTENANCE OF WAY AND STRUCTURES TO EARNINGS FOR THE FISCAL YEARS 1898 TO 1907; ALSO AVERAGE DAILY WAGE, THE AVERAGE PRICE OF RAILS, THE AVERAGE PRICE OF FIR TIES AND AVERAGE PRICE OF ALL TIES FOR THE SAME YEARS; ALSO THE RATIO OF GENERAL EXPENSES TO EARNINGS FOR THE SAME YEARS.

Note.—All data herein given is taken from reports to the Interstate Commerce Commission.

FISCAL YEAR	MAINTENANCE OF WAY AND STRUCTURES					GENERAL EXPENSES
	Percentage of Earnings	Average Daily Wage	Average Price of Rails per Ton	Average Price of Fir Ties Cents	Average Price of All Ties Cents	Percentage of Earnings
1898	13.26	$1.57	$19.11	22.3	23.5	2.81
1899	13.63	1.58	19.19	22.	24.7	3.18
1900	16.25	1.61	20.63	26.1	26.8	2.58
1901	16.13	1.63	31.50	26.3	28.9	2.68
1902	16.36	1.67	27.84	26.4	29.7	2.36
1903	15.24	1.73	29.54	28.8	32	1.90
1904	14.05	1.71	29.28	29.8	32.9	2.10
1905	14.26	1.64	29.27	28.2	30.5	2.04
1906	12.15	1.67	29.26	28	30.5	1.67
1907	13.25	1.84	29.49	38.3	43	1.56
1907 compared with 1898:						
Increase	.....	.27	$10.38	16.	19.5	.....
	.....	17.20%	54.32%	71.75%	82.98%	.....
Decrease	0.01%	.....	.....	.....	.....	1.25%

I have also made a statement combining the cost of conducting transportation and maintenance of equipment for the same years, that is from 1898 to 1907, which shows that the increase in the average daily wage of maintenance and equipment men was 16.34 per cent., and conducting transportation employees 17.67 per cent. The price of coal increased 38.15 per cent.; and that the percentage of conducting transportation and maintenance of equipment of gross earnings increased 9.39. So that was true with reference to the first statement is substantially true with reference to this statement as to the company overcoming the increased expense.

(Statement offered and received in evidence, and marked "Johnson Exhibit No. 2.") (Record 1791.)

JOHNSON, EXHIBIT 2.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING RATIO OF CONDUCTING TRANSPORTATION AND MAINTENANCE OF EQUIPMENT FOR THE FISCAL YEARS 1898 TO 1907; ALSO THE AVERAGE DAILY WAGE PAID MEN IN THOSE DEPARTMENTS, AND THE AVERAGE PRICE OF COAL.

Note.—All data herein given is taken from reports to the Interstate Commerce Commission.

FISCAL YEAR.	CONDUCTING TRANSPORTATION AND MAINTENANCE OF EQUIPMENT.			
	Percentage of Earnings.	Average Daily Wage.		Price of Coal Per Ton.
		Maintenance of Equipment.	Conducting Transportation.	
1898	30.74	$2.02	$ 2.35	$1.73
1899	30.57	2.05	2.40	1.63
1900	29.09	2.10	2.39	1.60
1901	32.28	2.07	2.39	1.86
1902	32.75	2.05	2.42	1.86
1903	35.02	2.24	2.57	1.86
1904	36.11	2.41	2.68	1.92
1905	36.65	2.33	2.67	2.10
1906	36.94	2.30	2.68	2.08
1907	40.13	2.35	2.77	2.39

1907 compared with 1898: Increase, percentage of earnings, 9.39 per cent; average daily wage maintenance of equipment, 33c., 16.34 per cent.; average daily wage conducting transportation, 42c., 17.87 per cent.; price of coal, per ton, 66c., 38.15 per cent.

I have prepared a statement showing the changes in freight cars or freight train cars, and also in locomotives, for the same period. The increase in the number of freight cars owned has been 129 per cent., and the increase in the capacity of those cars has been 256 per cent. The capacity per car has increased 55.6 per cent. In locomotives, the increase in engines owned has been 713, or 131½ per cent. Weight on drivers has increased practically 269 per cent., and the average weight on drivers has increased nearly 60 per cent.

(Statement offered and received in evidence, and marked "Johnson Exhibit No. 3.") (Record page 1791.)

JOHNSON, EXHIBIT 3.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING CHANGES IN FREIGHT CARS AND LOCOMOTIVES, 1898 TO 1907.

FISCAL YEAR.	CHANGES IN FREIGHT CARS.		
	Number of Cars. Owned.	Total Capacity In Tons.	Average Capacity Per Car in Tons.
1898	18,477	399,176	21.6
1899	20,583	483,588	23.5
1900	21,414	526,042	24.6
1901	26,704	693,149	26.0
1902	30,961	848,881	27.4
1903	32,057	905,045	28.2
1904	32,258	918,155	28.5
1905	35,135	1,050,244	29.9
1906	36,097	1,131,632	31.3
1907	42,320	1,422,503	33.6

Increase 1907 over 1898: Number of cars owned, 23,843, 129 per cent; total capacity in tons, 1,023,327, 256.36 per cent; average capacity per car, in tons, 12.0, 55.6 per cent.

FISCAL YEAR.	CHANGES IN LOCOMOTIVES.		
	Number of Locomotives Owned.	Weight on Drivers Pounds.	Average Weight on Drivers per Engine Pounds.
1898	542	44,432,965	81,980
1899	570	48,683,465	85,410
1900	594	52,596,575	88,546
1901	704	64,195,325	91,186
1902	796	78,320,775	98,393
1903	902	94,690,823	104,979
1904	913	95,838,923	104,971
1905	915	106,619,073	116,524
1906	1,005	122,341,073	121,732
1907	1,255	163,924,173	130,617

Increase 1907 over 1898: Number of locomotives owned, 713, 131.5 per cent; weight on drivers, pounds, 119,491,208, 268.92 per cent; average weight on drivers per engine, pounds, 48,637, 59.37 per cent.

I have also prepared a statement showing the items of expense involved in what may be termed yard service, train service and engine service—practically the movement of the business over the road, and composed of the wages of engine men, round house men, fuel for engines, water for engines, other supplies for engines, train service or the wages of trainmen, train supplies and expenses, and wages of switchmen, flagmen and watchmen, or yardmen, as they are sometimes termed. The cost per dollar of earnings in 1898 was 14½ cents, in round figures. In 1907 it has increased to 21½ cents in round figures. That is an increase of nearly 48 per cent.

(The statement referred to was offered and received in evidence, and marked "Johnson Exhibit No. 4.") (Record page 1793.)

JOHNSON, EXHIBIT 4.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING EXPENSES DIRECTLY INCIDENT TO THE COST OF MOVING BUSINESS

ENGINEMEN AND ROUNDHOUSEMEN,
FUEL FOR LOCOMOTIVES,
WATER FOR LOCOMOTIVES,
OIL, TALLOW AND WASTE FOR LOCOMOTIVES,
OTHER SUPPLIES FOR LOCOMOTIVES,
TRAIN SERVICE,
TRAIN SUPPLIES AND EXPENSES,
SWITCHMEN, FLAGMEN AND WATCHMEN,
WITH EARNINGS AND COST PER DOLLAR OF EARNINGS FOR SUCH EXPENSES, FISCAL YEAR ENDING JUNE 30, 1898 TO 1907.

Data taken from reports to Interstate Commerce Commission.

YEAR.	Passenger, Freight and Switching Earnings.	Expenses Referred to in Caption.	Cost Per Dollar of Earnings. Cents.
1898	$23,244,034.48	$ 3,37[illegible],201.45	14.52
1899	25,590,272.94	3,723,509.60	14.55
1900	29,483,844.18	3,896,780.62	13.22
1901	31,950,230.45	5,090,041.32	15.93
1902	40,755,360.95	6,635,334.58	16.28
1903	45,433,156.92	8,150,535.11	17.94
1904	45,779,411.97	8,363,935.57	18.27
1905	49,934,948.56	9,146,558.60	18.32
1906	60,220,341.49	11,340,347.90	18.83
1907	67,525,507.41	14,481,580.27	21.45

Increase in 1907 over 1898: Cost per dollar of earnings, 6.93 cents, equal to 47.73 per cent.

I have also a statement here showing the ratio of all operating expenses to gross earnings for the same period of years, showing increases between 1898 and 1907 of 8.13 per cent. Applying the rule recently declared by the Commission as to the charging of operating expenses and depreciation of equipment, that shows that all operating expenses and depreciation of equipment and taxes were, in 1898, 52.37 per cent. of the gross earnings, and in 1907 the same cost was 61.39 per cent., an increase of a little over 9 per cent.

(The statement referred to was offered and received in evidence, and marked "Johnson Exhibit No. 5.") (Record page 1793.)

JOHNSON EXHIBIT 5.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING RATIO OF ALL OPERATING EXPENSES TO EARNINGS FOR THE FISCAL YEARS 1898 TO 1907. ALSO THE REVENUE PER TON PER MILE, THE RATIO OF FOREST PRODUCT TONNAGE MOVED FOR THE SAME YEARS. ALSO STATEMENT SHOWING EFFECT OF INCLUDING WITH THE OPERATING EXPENSES THE TAXES AND DEPRECIATION OF EQUIPMENT APPLICABLE UNDER THE PRESENT RULES OF THE INTERSTATE COMMERCE COMMISSION FOR THE FISCAL YEARS 1898 AND 1907, RESPECTIVELY.

Fiscal Year.	All Operating Expenses Ratio of earnings.	Revenue per ton per mile. Cents.	Ratio of tons of lumber and other forest products carried to all tons of freight carried.
1898	46.81%	1.065	26.14%
1899	47.38	1.047	27.38
1900	47.92	0.988	31.00
1901	51.09	0.944	31.18
1902	51.47	0.900	33.34
1903	52.16	0.858	39.79
1904	52.26	0.880	39.79
1905	52.95	0.832	38.82
1906	50.76	0.828	38.82
1907	54.94	0.866	37.38
1907 compared with 1898	Inc. 8.13%	.....	11.24%
	Dec.	0.199	.....
		18.68%	

NOTE.—Data shown above taken from reports to Interstate Commerce Commission.

	1898	1907
Gross Earnings	$23,659,142.42—100%	$68,447,453.65—100%
Operating Expenses	11,074,795.02—46.81%	37,601,938.12—54.94%
Depreciation of Equipment	635,566.75— 2.68%	2,018,239.37— 2.95%
Taxes	682,800.00— 2.88%	2,398,719.00— 3.50%
Toatl Expenses, Depreciation and Taxes	$12,393,161.77—52.37%	$42,018,896.49—61.39%
Net Earnings	$11,265,980.65—47.63%	$26,428,557.16—38.61%

NOTE.—Amounts shown above for depreciation of equipment were not charged in the accounts for the respective years. They are the amounts chargeable under the Classification of Operating Expenses put in force by the Interstate Commerce Commission July 1, 1907.

I have also prepared a statement showing the tons one mile, and revenue on the shipments of lumber and shingles under the tariffs at issue. We had this specially prepared for the fiscal years ending June 30, 1904 and 1906. The statement shows that for 1904 the average revenue per ton per mile on the lumber and shingles was 5.15 mills, and on all other freight 1.017 cents, and the average on all freight was 8.8 mills.

In 1906 the average earnings per ton per mile on the lumber and singles was 4.58 mills, on all other freight 1.016 cents. The average for all business was 8.28 mills. The total revenue received from lumber covered by this tariff for 1906 was $8,058,-539.95. In 1906 all operating expenses were $31,095,432. Of tons carried in 1906 east bound, the lumber and shingles was a little over 28 per cent. That is, all eastbound lumber made up 28 per cent. of all eastbound traffic. The percentage of all lumber and forest products from Oregon and Washington in 1906 was practically 23 per cent. of the eastbound tons carried. We do not know our earnings from eastbound traffic as distinguished from our earnings from westbound traffic. In 1906 all of the lumber was 28 per cent. of all the eastbound traffic. That is, all lumber and shingles was 28 per cent. of the eastbound traffic.

(The statement referred to was offered and received in evidence, and marked "Johnson Exhibit No. 6.") (Record page 1797.)

JOHNSON, EXHIBIT 6.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING EFFECT OF PACIFIC COAST LUMBER AND SHINGLE SHIPMENTS UNDER TARIFF AT ISSUE ON THE RATE PER TON PER MILE FOR FREIGHT, AND RATIO OF ITS EARNINGS TO OTHER EARNINGS.

Fiscal Year ending June 30, 1904.	Tons One Mile	Freight Revenue.	Rate per Ton per Mile Cents
Pacific Coast lumber and shingles under tariff at issue	1,006,564,597	$ 5,183,474.97 = 15.98%	0.515
All other freight	2,679,107,425	27,250,569.28 = 84.02%	1.017
All freight	3,685,672,022	$32,434,044.25 = 100 %	0.880
Earnings on lumber and shingles covered by tariffs at issue		$ 5,183,474.97 = 11.11%	
Earnings from all other business		41,456,821.99 = 88.89%	
Total gross earnings		$46,640,296.96 = 100 %	
Fiscal Year Ending June 30, 1906.	**Tons One Mile**	**Freight Revenue.**	**Rate per Ton per Mile Cents.**
Pacific Coast lumber and shingles under tariffs at issue	1,765,095,997	$ 8,058,539.95 = 18.55%	0.457
All other freight	3,480,164,083	35,373,241.66 = 81.45%	1.016
All freight	5,245,260,080	$43,431,781.61 = 100 %	0.828
Earnings on lumber and shingles covered by tariffs at issue		$ 8,058,539.95 = 13.18%	
Earnings from all other business		53,074,115.52 = 86.82%	
Total gross earnings		$61,132,655.47 = 100 %	

Exhibit No. 5 shows that the average revenue per ton per mile in 1898 was 1.065 cents, and that the ratio of lumber and other forest products carried to all tons of freight carried was a little over 68 per cent. By "other forest products" I mean logs, everything. There would be less of them than lumber. Our total movement in 1906 was, lumber and shingles 18.8 per cent., other forest products, 4.87 per cent.; logs, 15.14 per cent. This is based on the company's own classification and not on the Interstate Commerce Commission classification.

Commissioner Prouty: It is a fact that the percentage of logs you moved is almost as great as the percentage of lumber, so in giving these statistics you should give the lumber and shingles; not the lumber and other forest products.

Mr. Johnson: The percentage of logs is nearly as much as the lumber and shingles; yes, sir, that is true.

Mr. Kerr: We will put these figures in for what they are worth.

In 1898 the average rate per ton per mile on all freight was 1.065 cents, and that the ratio of tons of lumber and other forest products carried to all tons of freight carried—and this is on the basis of the Interstate Commerce Commission classification of tonnage—was 26.14 per cent. In 1907 the revenue per ton per mile had decreased to 8.66 mills, and the ratio of lumber and other forest products carried had increased to 37.38 per cent. of all tons carried. Logs are handled in the west and also in the east. They are handled at a comparatively low rate. I do not remember what these rates are.

From this statement it appears that there was less Pacific coast lumber transported in 1907 than in 1906. The average rate per ton per mile of earnings was greater in 1907 than in 1906. By 1907 I mean the fiscal year ending June 30, 1907.

(The statement referred to was offered and received in evidence, and marked "Johnson Exhibit No. 7.") (Record page 1801.)

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[redacted]

[redacted]

[redacted]

JOHNSON EXHIBI

NORTHERN PACIFIC RAILWA

STATEMENT SHOWING RATIO OF LUMBER AND SHINGLES—OTHER FOREST AND L. C. L. BUSINESS BASED ON TONS CARRIED. FISCAL

EA

Fiscal Year.	Lumber and Shingles.		Other Forest Products.		Logs.		A
	Tons	Per Cent.	Tons	Per Cent.	Tons	Per Cent.	
1904	1,400,052	21.93	330,211	5.17	1,226,286	19.21	
1905	1,652,928	25.66	260,726	4.05	928,383	14.42	
1906	2,175,364	28.06	302,410	3.91	1,232,615	15.90	
1907	2,026,379	24.49	338,138	4.09	1,380,217	16.68	
Total.....	7,254,723	25.15	1,231,485	4.27	4,767,501	16.52	1
							WE
1904	631,032	9.15	517,835	7.51	1,279,661	18.55	
1905	642,080	9.73	451,582	6.86	1,124,849	17.05	
1906	713,113	9.38	445,047	5.85	1,093,068	14.37	
1907	766,400	9.05	370,734	4.38	1,372,689	16.21	
Total.....	2,752,625	9.31	1,785,198	6.04	4,870,267	16.47	1
							EA
1904	2,031,084	15.29	848,046	6.39	2,505,947	18.86	
1905	2,295,008	17.60	712,308	5.46	2,053,232	15.76	
1906	2,888,477	18.80	747,457	4.87	2,325,683	15.14	
1907	2,792,779	16.68	708,872	4.24	2,752,906	16.44	
Total.....	10,007,348	17.13	3,016,683	5.16	9,637,768	16.50	3

Office of Auditor Freight Receipts,
St. Paul, Minn., Dec. 6, 1907.

JOHNSON EXHIBIT 7.

NORTHERN PACIFIC RAILWAY COMPANY.

TIO OF LUMBER AND SHINGLES—OTHER FOREST PRODUCTS—LOGS—ALL OTHER CARLOAD COMMODITIES, C. L. BUSINESS BASED ON TONS CARRIED. FISCAL YEARS ENDING JUNE 30, 1904 TO 1907.

EAST

	Other Forest Products.		Logs.		All Other C. L. Commodities.		L. C. L.		Total.	
er nt.	Tons	Per Cent.	Tons	Per Cent.	Tons	Per Cent.	Tons	Per Cent.	Tons	Per Cent.
.93	330,211	5.17	1,226,286	19.21	3,071,125	48.10	356,723	5.59	6,384,397	100.00
.66	260,726	4.05	928,383	14.42	3,146,140	48.85	452,361	7.02	6,440,538	100.00
.06	302,410	3.91	1,232,615	15.90	3,606,266	46.52	435,224	5.61	7,751,879	100.00
.49	338,138	4.09	1,380,217	16.68	4,096,320	49.51	433,258	5.23	8,274,312	100.00
.15	1,231,485	4.27	4,767,501	16.52	13,919,851	48.25	1,677,566	5.81	28,851,126	100.00
					WEST					
15	517,835	7.51	1,279,661	18.55	3,999,965	57.97	470,587	6.82	6,899,080	100.00
73	451,582	6.86	1,124,849	17.05	3,800,995	57.62	576,745	8.74	6,596,251	100.00
38	445,047	5.85	1,093,068	14.37	4,785,261	62.93	567,944	7.47	7,604,433	100.00
05	370,734	4.38	1,372,689	16.21	5,282,444	62.39	674,891	7.97	8,467,158	100.00
31	1,785,198	6.04	4,870,267	16.47	17,868,665	60.43	2,290,167	7.75	29,566,922	100.00
					EAST AND	WEST				
29	848,046	6.39	2,505,947	18.86	7,071,090	53.23	827,310	6.23	13,283,477	100.00
60	712,308	5.46	2,053,232	15.76	6,947,135	53.29	1,029,106	7.89	13,036,789	100.00
80	747,457	4.87	2,325,683	15.14	8,391,527	54.64	1,003,168	6.53	15,356,312	100.00
68	708,872	4.24	2,752,906	16.44	9,378,764	56.02	1,108,149	6.62	16,741,470	100.00
13	3,016,683	5.16	9,637,768	16.50	31,788,516	54.42	3,967,733	6.79	58,418,048	100.00

s,

JOHNSON, EXHIBIT 6.

For the last fiscal year less than carload shipments based on tons moved, to the whole line, was 6.62 per cent. All the other was carload business, over 93 per cent.

I have prepared a statement taken from the Interstate Commerce Commission reports for the fiscal years 1890 to 1907, inclusive, showing the loaded car mileage and the empty car mileage, with the predenomination eastbound or westbound. That statement shows that the empty car mileage predominated eastbound in 1890 to the extent of 161 per cent.; and that in 1906 the predomination was westbound to the extent of 219.6 per cent. That is that the westbound empty car mileage was in excess of the eastbound by 219 per cent. on the whole system. In 1907 that predomination dropped back to 52 per cent., or a little over.

In 1907 we carried a large amount of material for the construction of the Chicago, Milwaukee & St. Paul Railway Company and for the Portland and Seattle Railway Company, all westbound. The revenue earned from that was in 1907 $273,-264.63, and in 1907 was $1,353,658. That was for the same period shown in our car statement.

(The car statement was offered and received in evidence and marked "Johnson Exhibit No. 8." Record page 1803.)

JONHS

NORTHERN PA

STATEMENT SHOWING LOADED AND EMPTY CAR MILE

Fiscal Year Ending June 30th.	LOADED CAR MILEAGE		PREDOMINATION.			
	East-bound.	West-bound.	East-Bound.	Per Cent.	West-bound.	
1890	47,198,996	74,209,976	.....	.....	27,010,980	
1891	57,578,886	72,626,778	.....	.....	15,047,892	
1892	63,847,357	62,149,524	1,697,833	2.73	.....	
1893	74,339,224	62,590,243	11,748,981	18.77	.....	
1894	61,364,668	46,260,184	15,104,484	32.65	.....	
1895	67,943,018	48,345,997	19,597,021	40.53	.....	
1896	71,909,890	51,432,564	20,477,326	39.81	.....	
1897	62,656,988	54,377,681	8,279,307	15.23	.....	
1898	67,337,347	65,192,532	2,144,815	3.29	.....	
1899	75,641,914	71,225,069	4,416,845	6.20	.....	
1900	90,242,706	74,071,846	16,170,860	21.83	.....	
1901	88,972,713	83,534,944	5,437,769	6.51	.....	
1902	122,101,831	93,094,434	29,007,397	31.16	.....	
1903	142,554,236	97,922,160	44,632,076	45.58	.....	
1904	139,208,037	98,642,898	40,565,139	41.12	.....	
1905	162,935,074	107,859,996	55,075,078	51.06	.....	
1906	178,624,131	124,564,059	54,060,072	43.40	.....	
1907	157,186,958	152,317,801	4,869,157	3.20	.....	

St. Paul, Minn., Dec. 2, 1907.

JONHSON, EXHIBIT 8.

NORTHERN PACIFIC RAILWAY COMPANY.

SHOWING LOADED AND EMPTY CAR MILEAGE, EAST-BOUND AND WEST-BOUND, FOR THE WHOLE ROAD.

PREDOMINATION.				EMPTY CAR MILEAGE		PREDOMINATION.			
-Bound.	Per Cent.	West-bound.	Per Cent.	East-bound.	West-bound.	East-bound.	Per Cent.	West-bound.	Per Cent.
.....	.....	27,010,980	57.23	36,507,540	13,987,279	22,529,261	161.17	.....	.....
.....	.....	15,047,892	26.13	28,715,112	16,670,033	12,045,079	72.17	.....	.....
97,833	2.73	.....	.....	23,721,266	22,731,979	989,287	4.35	.....	.....
48,981	18.77	.....	.....	18,570,693	31,914,808	.....	.....	13,344,115	71.86
04,484	32.65	.....	.....	12,989,833	30,051,633	.....	.....	17,061,800	131.35
97,021	40.53	.....	.....	12,544,972	33,114,917	.....	.....	20,569,945	163.97
77,326	39.81	.....	.....	12,980,785	33,442,681	.....	.....	20,461,896	157.63
79,307	15.23	.....	.....	16,052,552	27,243,388	.....	.....	11,150,836	69.47
44,815	3.29	.....	.....	21,858,695	26,396,253	.....	.....	4,537,558	20.76
16,845	6.20	.....	.....	22,000,645	28,406,598	.....	.....	6,405,953	29.12
70,860	21.83	.....	.....	21,056,952	40,429,499	.....	.....	19,372,547	92.00
37,769	6.51	.....	.....	28,219,290	35,554,145	.....	.....	7,334,855	25.99
07,397	31.16	.....	.....	24,394,767	56,610,681	.....	.....	32,215,914	132.06
32,076	45.58	.....	.....	25,639,766	73,737,167	.....	.....	48,097,401	187.59
65,139	41.12	.....	.....	27,049,480	71,527,820	.....	.....	44,478,340	164.43
75,078	51.06	.....	.....	26,435,392	85,618,812	.....	.....	59,183,420	223.88
60,072	43.40	.....	.....	26,732,519	85,437,636	.....	.....	58,705,117	219.60
69,157	3.20	.....	.....	32,772,942	49,941,843	.....	.....	17,168,901	52.39

I have prepared a statement showing the empty car movement in Montana and Idaho, which shows that the empty car mileage predominated eastbound in 1890 to the extent of 158 per cent., and that it predominated westbound in 1906 to the extent of 853.7 per cent., and fell back in 1907 to 253.8 per cent. We have not got the movement in cars. It is expressed here in miles, though.

(The statement was received in evidence and marked "Johnson Exhibit No. 9." Record page 1804.)

JOHNSON, EXHIBIT 9.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING REVENUE TON-MILEAGE IN MONTANA AND IDAHO.

Fiscal Year Ending June 30.	East-bound.	West-bound.	PREDOMINATION.			
			East-bound.	Per Cent.	West-bound.	Per Cent.
1890	119,188,084	269,358,779	.....	.....	150,170,695	126.0
1891	203,735,208	233,559,124	.....	.....	29,823,916	14.6
1892	165,014,935	173,213,291	.....	.....	8,198,356	5.0
1893	252,979,001	165,553,424	87,243,577	52.7	.....	.....
1894	201,047,400	101,192,834	99,854,566	98.7	.....	.....
1895	236,814,691	108,199,831	128,614,860	118.9	.....	.....
1896	250,280,436	117,978,496	132,301,940	112.1	.....	.....
1897	229,782,042	141,046,189	88,735,853	62.9	.....	.....
1898	295,308,577	217,938,932	77,369,645	35.5	.....	.....
1899	331,320,695	240,001,049	91,319,646	38.0	.....	.....
1900	460,288,083	272,793,205	187,494,878	68.7	.....	.....
1901	485,932,055	326,025,017	159,907,038	49.0	.....	.....
1902	668,225,561	334,688,646	333,536,915	99.6	.....	.....
1903	817,355,992	378,720,009	438,635,983	115.8	.....	.....
1904	859,059,885	387,653,261	471,406,624	121.6	.....	.....
1905	1,176,383,063	459,434,147	716,948,916	156.0	.....	.....
1906	1,339,741,529	569,817,972	769,923,557	135.1	.....	.....
1907	1,214,874,855	794,396,012	420,478,843	52.9	.....	.....
	9,307,150,092	5,291,570,218	4,203,772,841		188,192,967	

St. Paul, Minn., Nov. 6, 1907.

I have a statement showing the tons of all lumber carried and the relation of the revenue from that source to all other freight. The statement shows the tons of lumber and other forest products carried and the revenue on the same for the fiscal year ending June 30, 1906, showing the business that originated in Oregon and Washington and all other states, and all freight carried. The lumber revenue from other states was 7.07 per cent. That is of all freight carried.

(The statement referred to was received in evidence, and marked "Johnson Exhibit No. 10." Record page 1805.)

JOHNSON EXHIBIT 10.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING TONS AND TON MILES OF LUMBER AND OTHER FOREST PRODUCTS CARRIED, AND REVENUE ON SAME, ALSO ENTIRE GROSS EARNINGS, FOR FISCAL YEAR ENDING JUNE 30, 1906.

	Tons	Per Cent	Ton Miles	Per Cent	Revenue	Per Cent
Oregon and Washington	3,524,552	22.95	1,999,109,184	38.11	$9,923,487.04	22.85
All other States	2,437,065	15.87	383,712,657	7.32	3,071,710.24	7.07
	5,961,617	38.82	2,382,821,841	45.43	12,995,197.28	29.92
All Other Freight Carried	9,394,695	61.18	2,862,438,239	54.57	30,436,584.33	70.08
All Freight Carried	15,356,312	100.	5,245,260,080	100.	$43,431,781.61	100.

Total Gross Earnings $61,132,655.47

Earnings on Lumber and Other Forest Products ..... $12,995,197.28 or 21.26%

That same statement shows that the percentage of revenue from lumber and other forest products for 1906, for the whole road, was 21.26 per cent. of the total gross earnings of the system.

Commissioner Prouty: You show in this statement that the number of tons originating in Oregon and Washington is three and a half million, which is 22.95 per cent. of your entire tonnage.

Mr. Johnson: Tons moved.

Commissioner Prouty: You show the revenues from that to be 22.85 per cent., but of course you have given here simply tons moved. You have not given the ton miles.

Mr. Johnson: There is another statement that has the ton miles.

Commissioner Prouty: This would show you are getting as much from your lumber as you are getting from anything else.

Mr. Kerr: That is very true, but the revenue per ton per mile on lumber is about four and a half as against eleven on the other.

Commissioner Prouty: In that you apparently include these logs. It appears that the logs make up about as much tonnage as the lumber. I do not know how it is out in Washington, but usually those logs are at an extremely low rate.

I have separated the logs from the lumber. I have shown there the ton miles and revenue from lumber and shingles under the tariffs at issue, and the average rate per ton mile received by the company. My Exhibit No. 4 shows the rate per ton per mile on lumber and shingles under the tariff under consideration for the year 1904. That amounts to 5.15 mills, and the revenue from the same traffic per ton per mile is 4.57 mills for 1906. My statement shows the number of tons of lumber and shingles under the present tariff moved one mile, and the amount of all other freight moved one mile, and a comparison of the earnings of the two sources. The tons one mile in the fiscal year ending June 30, 1904, of lumber and shingles, under these tariffs at issue, was 1,600,564,597, or 27.31 per cent. of all ton mileage. The revenue represented slightly less than 16 per cent. of all the freight revenue.

JOHNSON, EXHIBIT 11.

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING TON MILEAGE OF LUMBER AND SHINGLES FROM OREGON AND WASHINGTON UNDER TARIFFS AT ISSUE, AND ALL OTHER REVENUE FREIGHT HAULED, FISCAL YEARS ENDING JUNE 30, 1898, 1904 AND 1906, WITH PERCENTAGES, FURNISHED IN COMPLIANCE WITH ORDER OF THE INTERSTATE COMMERCE COMMISSION.

TESTIMONY OF W. G. JOHNSON.
Page 1808.

	Intrastate Freight	Interstate Freight.	Ratio Between Lumber, Shingles, and Other Freight.	Ratio Between East-bound and West-bound.	All Revenue Freight.	Ratio Between East-bound and West-bound.
Fiscal Year Ending June 30, 1898:						
Eastbound lumber and shingles (estimated)	.....	315,734,174	42.12	25.16	315,734,174	19.51
East-bound other freight	125,908,593	433,926,615	57.88	34.58	559,835,208	34.60
East-bound all freight	125,908,593	749,660,789	.....	59.74	875,569,382	54.11
West-bound all freight	237,346,443	505,254,459	.....	40.26	742,600,902	45.89
East and West-bound, all freight	363,255,036	1,254,915,248	.....	100.00	1,618,170,284	100.00
Fiscal Year Ending June 30, 1904:						
East-bound lumber and shingles	.....	1,006,564,597	52.61	35.38	1,006,564,597	27.31
East-bound other freight	371,267,390	906,649,395	47.39	31.87	1,277,916,785	34.67
East-bound all freight	371,267,390	1,913,213,992	.....	67.25	2,284,481,382	61.98
West-bound all freight	469,481,079	931,709,561	.....	32.75	1,401,190,640	38.02
East and West-bound, all freight	840,748,469	2,844,923,553	.....	100.00	3,685,672,022	100.00
Fiscal Year Ending June 30, 1906:						
East-bound lumber and shingles	.....	1,765,095,997	59.37	40.74	1,765,095,997	33.65
East-bound other freight	376,128,272	1,207,752,560	40.63	27.87	1,583,880,832	30.20
East-bound all freight	376 128,272	2,972,848,557	.....	68.61	3,348,976,829	63.85
West-bound all freight	536,332,634	1,359,950,167	.....	31.39	1,896,283,251	36.15
East and West-bound, all freight	912,460,906	4,332,799,174	.....	100.00	5,245,260,080	100.00

St. Paul, Minn., Dec. 28, 1907.

Cross Examination.

I did some work on the tables prepared in the hearing before the State Commission in Minnesota in the recent cases up there. There were a lot of commodity rates involved in that controversy. The comparison I have made here on this case is a comparison that includes the cost of moving all this local traffic through warehouses; the cost for doing all business, and the cost of doing local business and less than carload business is very much greater than the cost of other business. I cannot tell what it costs us to move freight per ton per mile on our road. I can tell you the general average.

These figures are taken from the reports to the Commission. I do not know of any reason for the empty car movement through Montana other than to go west for lumber. I believe there is some ore moved in there. I cannot explain entirely what the cause of the empty car movement is. I do not include in operating expenses permanent improvements and betterments. The annual reports show that appropriations were made for improvements. I am perfectly clear that we do not include those in our statement of operating expenses. We know what the total ton mileage of the line is and the total revenue. The revenue divided by the total ton mileage gives you the average rate per ton per mile for all commodities. On the same principle, we work out the ton mileage of the lumber and the shingles under these tariffs from our records. We divided the ton miles into the revenue and got the average rate per ton mile received for the business.

The only explanation of the fact that the rate per ton mile on lumber and forest products was less in 1906 than it was in 1904 is either that the ratio of shingle shipments changed, or else the average haul charged—lengthened.

J. G. WOODWORTH (Record page 1818) testified as follows:

I am traffic manager of the Northern Pacific Railway Company. I have been with the Northern Pacific Company three years. I have been connected with one or another of the different railroads in this case for the last twenty years. At the time of the putting into effect of the so-called 40-cent rate I was assistant general freight agent of the Union Pacific, located

at Omaha, and I knew in a general way of the facts and conditions as they have been stated here.

The instructions to prepare the tariffs carrying the advance in rates now complained of, were given through me to the subordinates, and I might also say that I am familiar with the reason for making the change.

I have made a table which compares rates and ton mile rates on lumber from our principal shipping points to the most important points of destination on our line between Portland and St. Paul. It shows the rates from Little Falls, Minnesota, Missoula, Sand Point, Spokane, Tacoma, South Bend and various other points on the Pacific Division to the important stations on our line between Minneapolis and Billings.

(The table was received in evidence and marked "Woodworth Exhibit No. 1." Record page 1820.)

INSON, N. D.		GLENDIVE, MONT.			BILLINGS, MONT.		
Rate in Cents		Distance.	Rate in Cents.		Distance	Rate in Cents	
Per 100 lbs.	Per Ton per Mile.		Per 100 lbs.	Per Ton per Mile.		Per 100 lbs.	Per Ton per Mile
20	.883	.....	38	1.360	.....	48	1.224
20	.883	558.5	38	1.360	784.2	48	1.224
.....	.....	.....	.....	.....	.....	.....	.....
25	.850	588.2	25	.850	362.5	20	1.103
33½	.759	.....	33	.850	.....	32	1.161
39	.883	776.8	36	.943	551.1	32	1.161
40	.841	.....	35	.828	.....	34½	1.113
40	.841	845.3	37	.875	619.6	34½	1.113
40	.594	.....	40	.644	.....	35	.689
47½	.705	1,241.0	45	.724	1,015.3	40	.787
40	.548	.....	40	.596	.....	35	.621
47½	.651	1,341.8	45	.665	1,126.1	40	.710
40	.551	.....	40	.595	.....	35	.625
47½	.654	1,344.4	45	.669	1,118.7	40	.714
40	.536	.....	40	.577	.....	35	.603
47½	.635	1,385.5	45	.649	1,159.8	40	.689
40	.529	.....	40	.568	.....	35	.592
47½	.627	1,406.5	45	.639	1,180.8	40	.676

-2560 and A-3072.

N. A-2667.

) N. P. A-3432.

FROM		MINNEAPOLIS, MINN.			FARGO, N. D.		
		Distance	Rate in Cents		Distance.	Rate in Ce	
			Per 100 lbs.	Per Ton per Mile		Per 100 lbs.	Pe
	Old rate..	.....	5	.....	.....	12½	1
Little Falls, Minn....	New rate.	96.6	5	1.035	142.6	12½	1
	Old rate..	.....	40	.643	.....	40	
Missoula, Mont.....	New rate.	1,243.3	43	.691	1,004.1	43	
	Old rate..	.....	40	.558	.....	40	
Sand Point, Idaho....	New rate.	1,431.9	45	.628	1,192.7	45	
	Old rate..	.....	40	.533	.....	40	
Spokane, Wash.....	New rate.	1,500.4	45	.600	1,261.2	45	
	Old rate..	.....	40	.422	.....	40	
Tacoma, Wash.....	New rate.	1,896.1	50	.527	1,656.9	50	
	Old rate..	.....	40	.398	.....	40	
South Bend, Wash...	New rate.	2,006.9	50	.498	1,767.7	50	
	Old rate..	.....	40	.400	.....	40	
Aberdeen, Wash.....	New rate.	1,999.5	50	.500	1,760.3	50	
	Old rate..	.....	40	.392	.....	40	
Portland, Ore.....	New rate.	2,040.6	50	.490	1,801.4	50	
	Old rate..	.....	40	.388	.....	40	
Astoria, Ore.....	New rate.	2,061.6	50	.485	1,822.4	50	

Rates named above are covered by tariffs bearing I. C. C. numbers as follows:

From Little Falls to Minneapolis, Fargo, Jamestown, Bismarck and Dick
From all above points except Little Falls to Minneapolis and Fargo, T
From Missoula to Glendive (old) A-3302, (new) 3393; and Billings No.
From Missoula to Jamestown, Bismarck and Dickinson (old), N. P. A-3
From Sand Point to Jamestown, Bismarck and Dickinson, (old) N. P. A-
From Sand Point to Glendive, (old) A-3415, (new) A-3432; Billings, (old)
From Spokane, Tacoma, South Bend, Aberdeen, Portland and Asto
From Spokane to Glendive and Billings, (old) N. P. A-3415, (new) N. P.
From Tacoma, South Bend, Aberdeen, Portland and Astoria to Glendive,

WOODWORTH, EXHIBIT 1.

Northern Pacific Railway Company.

COMPARISON OF RATES ON LUMBER EXCEPT CEDAR.

RGO, N. D.		JAMESTOWN, N. D.			BISMARCK, N. D.			DICKINSON, N. D.			GLENDIVE, MONT.			BILLINGS, MONT.		
Rate in Cents			Rate in Cents.			Rate in Cents			Rate in Cents			Rate in Cents.			Rate in Cents	
Per 100 lbs.	Per Ton per Mile.	Distance.	Per 100 lbs.	Per Ton per Mile.	Distance	Per 100 lbs.	Per Ton per Mile	Distance.	Per 100 lbs.	Per Ton per Mile.	Distance.	Per 100 lbs.	Per Ton per Mile.	Distance	Per 100 lbs.	Per Ton per Mile
12½	1.753	.....	18½	.....	.....	20	1.187	.....	20	.883	.....	38	1.360	.....	48	1.224
12½	1.753	235.4	18½	1.568	337	20	1.187	452.8	20	.883	558.5	38	1.360	784.2	48	1.224
40	.796	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
43	.856	911.3	38	.834	809.7	37	.913	693.9	25	.850	588.2	25	.850	362.5	20	1.103
40	.671	.....	35	.636	.....	34½	.691	.....	33½	.759	.....	33	.850	.....	32	1.161
45	.755	1,099.9	41	.745	998.3	41	.821	882.5	39	.883	776.8	36	.943	551.1	32	1.161
40	.626	.....	40	.684	.....	40	.749	.....	40	.841	.....	35	.828	.....	34½	1.113
45	.713	1,168.4	42	.719	1,066.8	42	.787	951.0	40	.841	845.3	37	.875	619.6	34½	1.113
40	.482	.....	40	.512	.....	40	.547	.....	40	.594	.....	40	.644	.....	35	.689
50	.602	1,564.1	48½	.621	1,462.5	48½	.663	1,346.7	47½	.705	1,241.0	45	.724	1,015.3	40	.787
40	.452	.....	40	.477	.....	40	.508	.....	40	.548	.....	40	.596	.....	35	.621
50	.565	1,674.9	48½	.578	1,573.3	48½	.616	1,457.5	47½	.651	1,341.8	45	.665	1,126.1	40	.710
40	.454	.....	40	.480	.....	40	.510	.....	40	.551	.....	40	.595	.....	35	.625
50	.568	1,667.5	48½	.582	1,565.9	48½	.618	1,450.1	47½	.654	1,344.4	45	.669	1,118.7	40	.714
40	.444	.....	40	.468	.....	40	.497	.....	40	.536	.....	40	.577	.....	35	.603
50	.555	1,708.6	48½	.567	1,607.0	48½	.603	1,491.2	47½	.635	1,385.5	45	.649	1,159.8	40	.689
40	.438	.....	40	.462	.....	40	.491	.....	40	.529	.....	40	.568	.....	35	.592
50	.547	1,729.6	48½	.560	1,628.0	48½	.595	1,512.2	47½	.627	1,406.5	45	.639	1,180.8	40	.676

as follows:

and Dickinson, N. P. A.-2076. From Little Falls to Glendive and Billings, N. P. A-2560 and A-3072
l Fargo, Transcontinental Freight Bureau (old) No. 564, (new) No. 850.
ings No. 3393 old and new.
N. P. A-3207, (new) G. N. A-2667.
) N. P. A-3415, (new) G. N. A-2667.
llings, (old) A-3402, (new) A-3432.
and Astoria to Jamestown, Bismarck and Dickinson, (old) N. P. A-3095, (new) G. N. A-2667
new) N. P. A-3432.
o Glendive, (old) N. P. A-3095, (new) N. P. A-3432; Billings, (old) N. P. B-479, (new) N. P. A-3432

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I have made a similar statement comparing the rates from our lumber shipping points in like manner to Denver, Omaha, Kansas City, St. Louis, Chicago, etc.

(The statement was received in evidence and marked "Woodworth Exhibit No. 2." Record page 1820.)

W

NORTHE

COMPARISON

FROM		DENVER, COLO.			MINNEAPOLIS, MINN.		
		Distance.	Rate in Cents		Distance.	Rate in Cents.	
			Per 100 lbs.	Per Ton per Mile.		Per 100 lbs.	Per Ton per Mile.
	Old rate..	.....	35	.677	1,243.3	40	.643
Missoula, Mont.....	New rate.	1,032.8	40	.774	1,243.3	43	.691
	Old rate..	.....	40	.655	.....	40	.558
Sand Point, Idaho....	New rate.	1,221.4	45	.737	1,431.9	45	.628
	Old rate..	.....	40	.620	.....	40	.533
Spokane, Wash.....	New rate.	1,289.9	45	.697	1,500.4	45	.600
	Old rate..	.....	40	.474	.....	40	.422
Tacoma, Wash.....	New rate.	1,685.6	50	.593	1,896.1	50	.527
	Old rate..	.....	40	.445	.....	40	.398
South Bend, Wash...	New rate.	1,796.4	50	.556	2,006.9	50	.498
	Old rate..	.....	40	.447	.....	40	.400
Aberdeen, Wash.....	New rate.	1,789.0	50	.559	1,999.5	50	.500
	Old rate..	.....	40	.437	.....	40	.392
Portland, Ore.....	New rate.	1,830.1	50	.546	2,040.6	50	.490
	Old rate..	.....	40	.432	.....	40	.388
Astoria, Ore.....	New rate.	1,851.1	50	.540	2,061.6	50	.485

Rates named above are covered by Transcontinental Freight Bureau (R. H. Countis

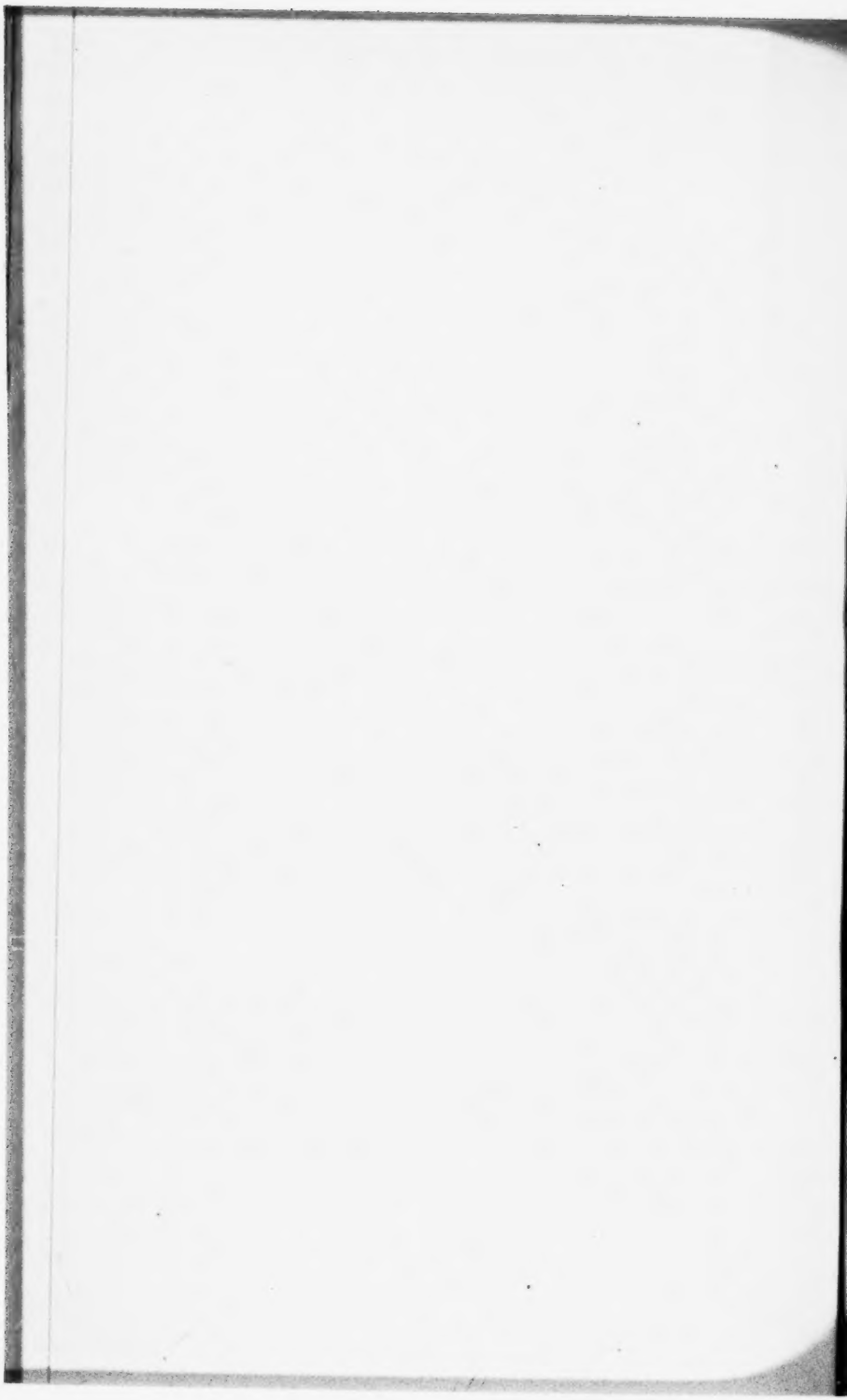
WOODWORTH, EXHIBIT 2.

NORTHERN PACIFIC RAILWAY COMPANY.

COMPARISON OF RATES ON LUMBER EXCEPT CEDAR.

MINNEAPOLIS, MINN.			OMAHA, NEB.			KANSAS CITY, MO.			ST. LOUIS, MO.			CHICAGO, ILL.		
Distance.	Rate in Cents.		Distance.	Rate in Cents.		Distance.	Rate in Cents.		Distance	Rate in Cents		Distance.	Rate in Cents	
	Per 100 lbs.	Per Ton per Mile.		Per 100 lbs.	Per Ton per Mile.		Per 100 lbs.	Per Ton per Mile.		Per 100 lbs.	Per Ton per Mile		Per 100 lbs.	Per Ton per Mile.
1,243.3	40	.643	.....	40	.637	.....	40	.567	.....	49½	.591	.....	50	.602
1,243.3	43	.691	1,255.1	43	.685	1,410.7	43	.609	1,674.7	52½	.627	1,661.8	53	.638
.....	40	.558	.....	45	.623	.....	50	.625	.....	52½	.563	.....	50	.540
1,431.9	45	.628	1,443.7	50	.692	1,599.3	50	.625	1,863.3	55	.590	1,850.4	55	.594
.....	40	.533	.....	45	.595	.....	50	.600	.....	52½	.543	.....	50	.521
1,500.4	45	.600	1,512.2	50	.661	1,668.1	50	.600	1,931.8	55	.569	1,918.9	55	.573
.....	40	.422	.....	50	.524	.....	50	.484	.....	52½	.451	.....	50	.432
1,896.1	50	.527	1,907.9	55	.576	2,063.5	55	.533	2,327.5	60	.516	2,314.6	60	.518
.....	40	.398	.....	50	.495	.....	50	.459	.....	52½	.431	.....	50	.412
2,006.9	50	.498	2,018.7	55	.544	2,174.3	55	.505	2,438.3	60	.492	2,425.4	60	.494
.....	40	.400	.....	50	.497	.....	50	.461	.....	52½	.432	.....	50	.413
1,999.5	50	.500	2,011.3	55	.547	2,166.9	55	.507	2,430.9	60	.493	2,418.0	60	.496
.....	40	.392	.....	50	.487	.....	50	.453	.....	52½	.425	.....	50	.407
2,040.6	50	.490	2,053	55	.536	2,208	55	.498	2,472	60	.485	2,459.1	60	.488
.....	40	.388	.....	50	.482	.....	50	.452	.....	52½	.421	.....	50	.403
2,061.6	50	.485	2,074	55	.530	2,209	55	.497	2,493	60	.481	2,480.1	60	.484

eight Bureau (R. H. Countiss, agent), tariffs (old) I. C. C. No. 564, (new) I. C. C. No. 850.



I have made a statement which shows the prices of typical grades of northern lumber for a period of ten years f. o. b. Minneapolis. These prices were taken from printed lists that were issued each year in January, or the nearest month to January in which a list was issued. I have endeavored to selete those grades which were commonly traded in in the territory which is under discussion.

(The statement was received in evidence and marked "Woodworth Exhibit No. 3." Record page 1822.)

WOODWORTH, EXHIBIT 3.

STATEMENT OF PRICES PER 1,000 FEET FOR TYPICAL GRADES OF NORTHERN PINE LUMBER, F. O. B. MINNEAPOLIS, DURING PERIOD OF ELEVEN YEARS, 1897 TO 1907, INCLUSIVE.

PRICES TAKEN FROM "BROUGHTON'S STANDARD PRICE LIST."

	"C" Flooring 16 ft.	3-8 in. Ceiling "B"	No. 2 D. Siding 16 ft.	No. 2 Common Boards 1x10x16	No. 3 Common Boards 1x10x16	2x10-16	2x4-16	Average
1897 March	$24.00	$20.00	$12.00	$10.50	$ 8.00	$10.00	$10.00	$13.50
1898 August	26.00	19.75	13.50	12.00	10.50	11.00	11.00	14.82
1899 October	28.50	23.00	16.00	14.00	13.00	13.50	13.50	17.36
1900 January	29.50	23.50	16.00	15.00	13.50	13.50	13.50	17.79
1901 May	29.50	23.50	17.00	15.50	14.00	13.50	13.50	18.00
1902 May	38.00	25.00	18.50	17.00	15.00	15.50	15.00	20.57
1903 August	41.00	28.00	18.50	17.00	15.00	15.50	15.00	21.43
1904 January	40.00	28.00	18.50	17.00	15.00	15.50	15.00	21.29
1905 January	40.00	28.00	18.50	17.00	15.00	17.00	15.50	21.57
1906 January	44.00	29.00	23.50	22.00	18.50	21.00	20.00	25.43
1907 March	45.00	30.00	26.50	25.00	22.00	23.50	22.00	27.71

I have made a similar statement of prices for southern pine delivered at so-called 23 cent points in the same period; taking figures which were published in the American Lumberman of September 7, 1907, and using the grades of southern lumber which according to the best information I could obtain corresponded with the grades of northern lumber shown in the other statement.

(The statement was received in evidence and marked "Woodworth Exhibit No. 4." Record page 1823.)

WOODWORTH, EXHIBIT 4.

STATEMENT OF PRICES PER 1,000 FEET FOR TYPICAL GRADES OF SOUTHERN PINE LUMBER DELIVERED AT 23-CENT RATE POINTS DURING PERIOD OF ELEVEN YEARS, 1897 TO 1907, INCLUSIVE.

PRICES TAKEN FROM TABLE PUBLISHED IN "AMERICAN LUMBERMAN" OF SEPTEMBER 7, 1907, PAGE 33.

	E. G. Flooring "A"	3-8 Ceiling "A"	6 in. Drop Siding "A"	No. 1 Common Boards 1x10-16	No. 2 Common Boards 1x10-16	No. 1 Dimension 2x10-16	No. 2 Dimension 2x4-16	Average
1897 February.....	$18.50	$12.75	$14.50	$12.00	$10.50	$11.50	$ 9.50	$12.75
1898 January.....	21.00	15.00	17.00	14.00	12.50	14.00	11.50	15.00
1899 February.....	21.00	15.00	17.00	13.50	12.00	13.00	11.00	14.64
1900 January.....	27.25	20.75	22.75	17.50	16.50	16.75	14.75	19.46
1901 January.....	25.50	18.25	20.00	16.00	15.00	15.00	13.00	17.54
1902 January.....	29.00	21.00	23.50	17.50	15.50	16.00	13.50	19.43
1903 January.....	29.00	20.00	22.50	17.50	15.00	16.50	14.50	19.29
1904 January.....	29.00	20.00	22.50	18.50	16.50	17.00	15.00	19.79
1905 January.....	28.00	20.50	23.50	18.00	16.00	16.50	15.00	19.64
1906 March.....	36.50	26.50	30.50	22.00	20.00	20.50	19.00	25.00
1907 January.....	35.75	25.00	28.50	22.00	20.00	21.00	19.25	24.50

I got from our purchasing agent a statement showing the prices we paid for the principal items of material at Pacific coast points in that same period. The price of ties is stated in cents per tie. 18 cents in 1896 and 50 cents in 1907. The earliest year for which a price per thousand is stated is 1898. It is shown here as $4.80 a thousand, and 20 cents per tie. The price per thousand in 1907 is $11. $4.80 a thousand represents 20 cents per tie. That was in 1898.

(The statement was received in evidence and marked "Woodworth Exhibit No. 5." Record page 1825.)

WOODWORTH EXHIBIT 5.

PRICES PAID BY THE NORTHERN PACIFIC RY. CO. FOR LUMBER, F. O. B., PACIFIC COAST POINTS DURING TWELVE YEARS FROM 1896 TO 1907, INCLUSIVE.

Kind of Lumber.	1896	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907
Car Siding	10.00	10.00	12.00	12.00	11.00	13.00	12.00	15.00	12.00	10.00	15.00	18.00
Car Roofing	8.00	8.00	10.00	11.00	10.00	11.00	10.00	12.00	10.00	8.00	12.00	14.00
*1 V. G. Fir Flooring	.....	*12.00	16.00	17.00	18.00	20.00	.....	23.50	19.00	17.50	22.00	23.00
*1 Drop Siding	.....	.....	14.00	‡14.00	14.00	.....	16.50	16.00	14.50	17.00	19.00	.....
Car Sills 35 ft. and 40 ft. per M. ft. Each	7.00	7.00	10.00	9.00	9.00	9.00	10.50	14.00	10.50	15.00	17.00	20.00
Cross Ties 7x9–8 ft., 7x8–8 ft., per M. ft. Each	.18	.18	.20	.20	.21½	.226	.223	.28	.282	.294	.42	.50 .41
Timbers, 12in.x12 in. to 32 ft	5.00	5.00	6.00	6.50	6.50	6.75	7.00	8.00	6.00	7.50	12.00	12.50
Stringers 9x18–32 ft	.....	.....	7.00	7.00	7.25	7.50	8.50	9.25	7.00	8.50	14.00	14.50
8x16–32 ft.	6.50	6.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

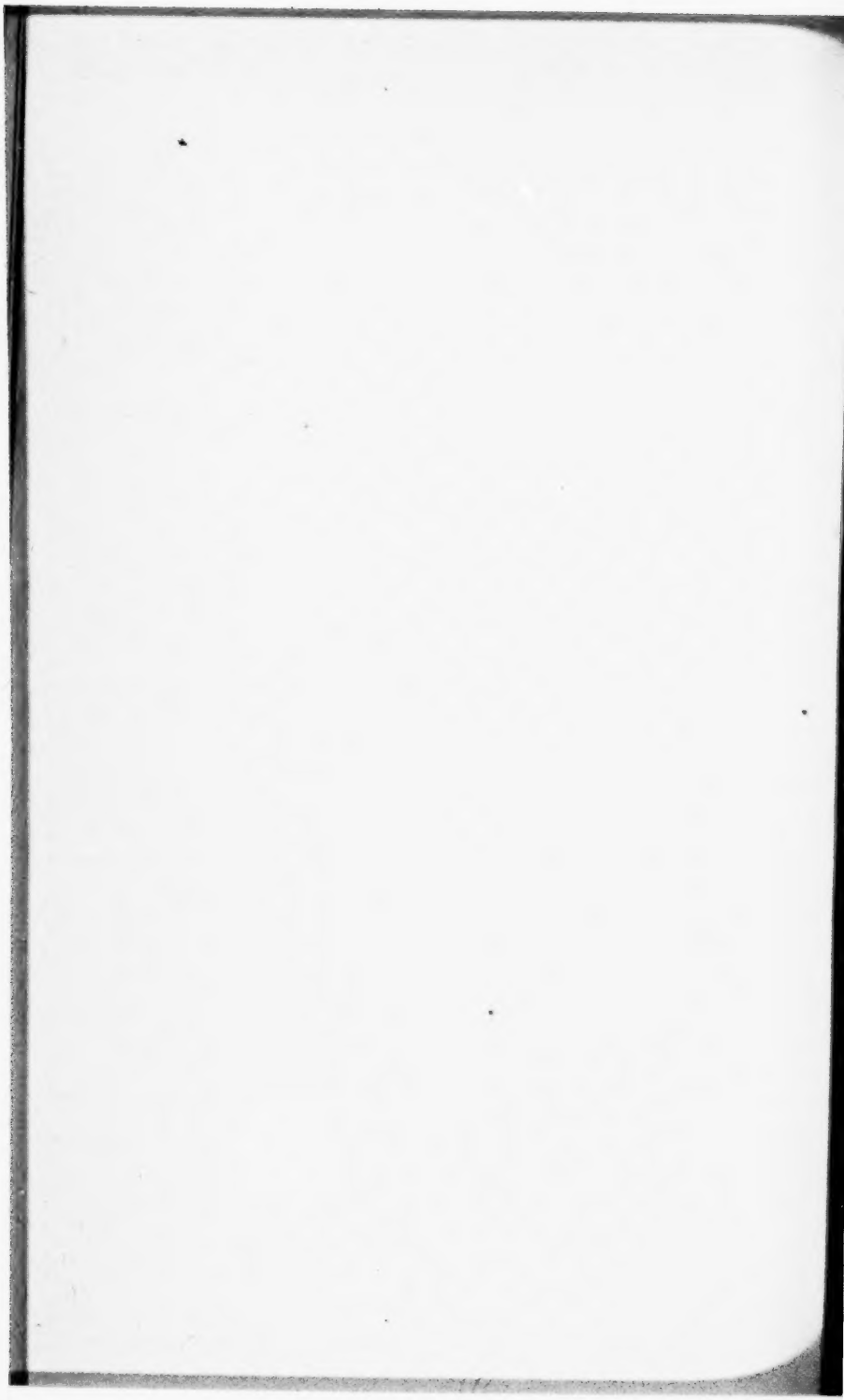
*Rough and Green.

‡No. 2 Drop Siding.

St. Paul, Minn.,
December 3rd, 1907.

I have a statement showing the number of carloads of lumber and shingles shipped in each year from 1897 to 1907 from our stations west of Ellensburg to the various territories. We have also separated the business which comes via Billings, and via Silver Bow, and via Sumach on the Canadian Pacific. The total of lumber and shingles in 1897 was 13,164 cars. In 1906 it was 72,564 cars. Our figures for 1907 will be somewhat less. In 1906 20,554 cars were shingles and 52,010 were lumber. In 1907 the shingles were nearly twice as much as the lumber. We had 8266 cars of shingles and 4890 cars of lumber. The shingle movement in that country came first.

(The statement was received in evidence and marked "Woodworth Exhibit No. 6." Record page 1826.)



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CARS OF LUMBER AND SHINGLES SHIPPED VIA NORTHERN

YEAR ENDING JUNE 30	WASHINGTON AND OREGON		IDAHO AND MONTANA		VIA SILV
	Lumber	Shingles	Lumber	Shingles	Lumber
1897	1,747	195	464	121	56
1898	2,902	428	245	103	250
1899	3,854	477	509	147	128
1900	5,502	594	675	217	65
1901	6,005	620	615	187	81
1902	8,242	795	770	207	844
1903	11,453	784	726	155	806
1904	11,070	855	758	234	1,254
1905	11,280	1,030	989	243	1,728
1906	12,214	767	1,577	256	2,639
1907	16,812	1,788	1,809	171	885

Traffic Manager's office, St. Paul, Minn., January 20, 1908.

WOODWORTH, EXHIBIT No. 6, CORRECTED (1907 FIGURES ADDED).

ERN PACIFIC FROM STATIONS IN WASHINGTON AND OREGON WEST OF ELLENSBURG, IN ELEVEN YEARS, 1897 TO 1907, INCLUSIVE.

SILVER BOW		VIA BILLINGS		MINNESOTA, DAK., MANITOBA		EASTERN TERMINAL AND BEYOND		VIA PORTLAND		VIA SUMAS		TOTAL		GRAND TOTAL
er	Shingles	Lumber	Shingles	Lumber	Shingles	Lumber	Shingles	Lumber	Shingles	Lumber	Shingles	Lumber	Shingles	
56	382	573	3,620	807	900	1,251	3,048	.....	.....	.....	.....	4,898	8,266	13,164
50	55	935	4,028	1,201	990	1,821	3,098	178	403	.....	.....	7,532	9,105	16,637
28	209	737	4,458	1,299	1,126	2,418	4,253	231	656	.....	.....	9,176	11,326	20,502
65	290	1,739	5,066	2,408	1,385	3,474	5,251	219	738	.....	.....	14,082	13,541	27,623
81	221	3,178	6,856	1,372	1,011	3,615	4,532	195	667	.....	.....	15,061	14,094	29,155
44	336	5,455	6,324	2,591	1,605	6,206	6,771	89	330	413	112	24,410	16,480	40,890
06	419	6,110	6,822	4,395	1,978	6,372	8,797	39	378	520	279	30,421	19,612	50,033
54	511	7,148	7,695	4,030	1,982	5,226	9,001	239	534	213	127	29,938	20,939	50,877
28	749	7,096	9,540	6,388	2,455	8,137	9,861	462	629	1,210	250	37,290	24,757	62,047
39	955	9,881	7,653	8,545	2,316	13,809	7,924	426	290	1,734	371	50,825	20,532	71,357
85	476	5,706	4,774	7,275	2,384	9,160	4,873	552	331	1,296	467	43,495	15,264	58,759

I would say the lumber shipments in 1907 had decreased between three and four thousand cars. In the calendar year 1906 we loaded 43,541 cars of lumber and 17,247 cars of shingles, while in 1907, up to October 31st, we had loaded of lumber 30,903 cars, and shingles 12,825 cars. That is a decrease of about 600 cars per month. We loaded in this same territory in November about 2400 cars of lumber and shingles. That is, destined to points east of the Cascade Mountains. I made a memorandum of the average weights per car of lumber shipped from points on the Northern Pacific west of Helena to points east of the Montana-North Dakota state line, and have shown separately the various shipping districts on our line, because there is a difference in the average loading weights. The average load, all kinds of cars, from points west of the Cascade mountains, in 1906 was 52,262 pounds. The first nine months of this year it had increased to 57,469 pounds. In August of last year we put into effect our new system of minimum loading, and that is the explanation of this increase. From what we call the Spokane district in 1906 the average weight was 47,403 pounds, and the first nine months of 1907 it was 51,658 pounds.

(The statement was received in evidence and marked "Woodworth Exhibit No. 7." Record page 1829.)

WOODWORTH EXHIBIT 7.

AVERAGE CARLOAD WEIGHTS, WESTERN LUMBER IN ALL CLASSES OF CARS.

	A	B	C	D	Total.
1905	45,826	42,143	44,500	47,881	45,861
1906	52,262	45,436	47,403	47,821	50,403
1907 (9 Mo.)	57,469	52,880	51,658	55,361	56,673

A—West of Cascade Mountains.
B—Cascade Mountains to Columbia River.
C—Columbia River to Arlee and Lothrop, Montana.
D—Arlee and Lothrop to Dakota State Line.

I have the car count statement of the loaded and empty cars passing Trout Creek, Montana, in the past five years, ending June 30th. Trout Creek is a division terminal, the ending of the Rocky Mountain Division, and the ending of the Idaho Division. It is a portion of our line where there is very little local business, and the record of cars passing Trout Creek or any point in that general locality would more truly represent through business, transcontinental business, than any other point we might select. The cars when they go west of there, are loaded to some extent and are liable to be loaded east of there; but if we were hauling cars the length of the line for transcontinental business, the loading of them would be pretty nearly represented by this statement of empty cars passing Trout Creek. The statement shows an excess of empty car movement over loaded car movement ranging from 63 per cent. in 1904 and 1905, to 38 per cent. in the year ending June 30th, 1907; or, to state it differently, in 1905 we handled loaded west 31,148 cars and empty west 53,541 cars, which in 1907 we handled loaded cars, 49,664 and empty cars 29,958. In 1903 the movement was westbound 27,529; west, empty, 41,251. In 1903 loaded eastbound, 66,167; empty 2,601. In 1905, loaded, east, 83,510; empty 999. In 1906, 89,818; empty 851.

The empty movement east should be limited and I assume is limited to what we call operating movement. The movement eastbound of special equipment like refrigerator cars, beef cars, are the cars that make up this movement. Stock cars are very often moved empty in very large numbers in both directions on a railroad, and especially on our railroad. Tank cars would come in that list also; and also poultry cars—any equipment that could not be loaded with ordinary eastbound freight.

The only thing I have to show the empty movement westbound in 1897 is a statement which shows the relation of the eastbound and westbound handled through Montana and Idaho in a period of years, but I think that is truly representative of the relatilon of the business. In 1892 the relative ton mileage in Montana and Idaho, which includes everything which passes over the main line in Montana and Idaho, was east bound 165,000,000. West bound it was 173,000,000. That reversed itself in the next year—east bound showing 252,000,000 and west bound 165,000,000. Coming down to 1906 the east bound was 1,339,000,000 and the west bound was 569,000,000, a little over one-third. So our inference would be that in 1892 the empty car movement was probably east bound but that by 1893 the

empty car movement would have been west bound. It has been west bound continuously since that time.

The lumber from what we call the Spokane district would show up in the east bound report at Trout Creek. That is a considerable movement. A statement based on the empty car haul shown at Ellensburg would make a very different showing. As I explained, as the cars go west they are engaged in the local business. We took this point as being typical of the through transcontinental business. When these empty cars get to Spokane, they are to some extent filled up with traffic and sent along west. The cars passing west from Ellensburg, through Ellensburg, include all the wheat loaded and stuff of that kind, that we load in eastern Washington. This year we expect the wheat crop of eastern Washington handled over our line will be about 25,000,000 bushels. That would be about 25,000 cars. As the statement will show, that is not a continuous business, but at this time we are hauling empties east from Tacoma in order to move the wheat. If we moved the wheat with reasonable promptness that condition would not exist for more than, at the outside, four or five months in the year. We feel it will be necessary for us to move that wheat more promptly in the future than we have done in the past. We took great liberties with that business in the last two or three years, making the farmers wait for their transportation to the extent that the movement was distributed to a great extent throughout the year, and that caused a great deal of complaint. That wheat is to a great extent competitive between our line and the O. R. & N.

(The statement was received in evidence and marked "Woodworth Exhibit No. 8." Record page 1838.)

("Woodworth Exhibit No. 9" was offered and received in evidence and marked accordingly. Record page 1838.)

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING REVENUE TON-MILEAGE IN MONTANA AND IDAHO.

Fiscal Year Ending June 30th.	Eastbound	Westbound	Predomination			
			Eastbound	%	Westbound	%
1890	119,188,084	269,358,779	.....	.....	150,170,695	126.0
1891	203,735,208	233,559,124	.....	.....	29,823,916	14.6
1892	165,014,935	173,213,291	.....	.....	8,198,356	5.0
1893	252,797,001	165,553,424	87,243,577	52.7	.....	.....
1894	201,047,400	101,192,834	99,854,566	98.7	.....	.....
1895	236,814,691	108,199,831	128,614,860	118.9	.....	.....
1896	250,280,436	117,978,496	132,301,940	112.1	.....	.....
1897	229,782,042	141,046,189	88,735,853	62.9	.....	.....
1898	295,308,577	217,938,932	77,369,645	35.5	.....	.....
1899	331,320,695	240,001,049	91,319,646	38.0	.....	.....
1900	460,288,083	272,793,205	187,494,878	68.7	.....	.....
1901	485,932,055	326,025,017	159,907,038	49.0	.....	.....
1902	668,225,561	334,688,646	333,536,915	99.6	.....	.....
1903	817,355,992	378,720,009	438,635,983	115.8	.....	.....
1904	859,059,885	387,653,261	471,406,624	121.6	.....	.....
1905	1,176,383,063	459,434,147	716,948,916	156.0	.....	.....
1906	1,339,741,529	569,817,972	769,923,557	135.1	.....	.....
1907	1,214,874,855	794,396,012	420,478,843	52.9	.....	.....
	9,307,150,092	5,291,570,218	4,203,772,841	.....	188,192,967	.....

St. Paul, Minn.
Nov. 6th, 1907.

Speaking for the entire period from 1893 to date, Asiatic business has not had any great influence, on the eastbound tonnage because it is such a small part of the total tonnage anyway. With the exception of a very few years and very small amounts, it has always shown an excess of west bound over east bound. In the year 1905, and that was the time of the Japan-Russian War, we show the highest excess of west bound over east bound, which was 57,000 tons. That would have taken probably about 2500 cars.

I have a statement here showing that business, in each direction since 1893.

(The statement was marked "Woodworth Exhibit No. 10." Record page 1839.)

WOODWORTH EXHIBIT 10.

ASIATIC TONNAGE YEARS ENDING JUNE 30TH, 1893 TO 1906 INCLUSIVE, IN TONS.

	Eastbound.	Westbound.
1893	11,574	.....
1894	12,942	.....
1895	20,175	3,021
1896	31,657	4,426
1897	30,604	16,329
1898	11,789	20,879
1899	14,793	17,799
1900	16,576	20,615
1901	16,039	15,568
1902	15,466	27,739
1903	13,529	19,255
1904	28,563	27,538
1905	11,132	68,245
1906	14,766	53,481
June 30, 1906 to date	20,692	46,361
Total	270,297	341,256

Office of Traffic Manager, Northern Pacific Railway Company, St. Paul, Minnesota, December 10th, 1907.

The greatest amount of east bound in any of these years was 31,000 tons. I have a memorandum taken from our general freight department records which shows that in the twelve months ending April 30th, 1907, we handled 46,601,180 pounds of canned salmon. That would be something less than two per cent. of the tonnage of lumber which we handled to points east of the Cascade mountains in the same period. That was a large pack of salmon that year.

The Yellow Pine Association publishes each month a statement showing the number of cars shipped from each southern state to each northern state, and taking their reports for the first nine months of 1907, they show a total of 419 cars to Minnesota, from mills which shipped a total of 178,855 cars in that period.

Cross-Examination.

I have been engaged in the railroad business a long time. I was with a grain and elevator firm, the F. H. Peevy & Company, for one year. I have worked for the Union Pacific and the O. R. & N. for over twelve years. At the time I left them in 1899 I was reasonably familiar with their roads, the physical conditions. I have never been over the line since then.

I think the Union Pacific line reaches a higher elevation than the Northern Pacific line. I do not think they have as many short lifts as we have.

The empty car movement was constantly increasing until this last year when it showed a very marked decrease. I think we show some decrease on the whole empty car movement, for the reason we have made every effort to cut out empty car mileage in connection with other business, and have gone further, I think, in delaying traffic and in inconveniencing shipments than we should have done in our efforts to do that. I have heard that we show a less empty movement in 1907 than the O. R. & N., the Union Pacific, the Great Northern or the Southern Pacific. This year our eastern lumber movement has fallen off, because we could not handle it.

Our rates from the coast to the east side of Washington is about ten to fourteen cents a hundred, or about that. In 1906 out of a total movement of 52,010 cars of lumber there were 12,804 cars to points in Washington and Oregon. I do not know how many of those went east of the Cascade mountains. That item includes everything we moved on short haul west of the Cascade Mountains, including some business to tidewater

points, handled at very low rates. There were about 12,894 cars in 1906 moved locally, either on the west or east side, in Washington. The rate from the coast is 35 cents to Montana common points. There is no lumber shipped east of Spokane to amount to anything.

Mr. Teal (page 1847): I say from Washington and Oregon the report you have filed shows in round numbers three and one-half million tons of lumber carried.

Mr. Woodworth: Yes.

Mr. Teal: And the revenue you derived was $9,923,000. As I figure that, that is a little less than $3 a ton. Now on your lumber, eliminating Washington, there were 40,000 carloads went east of Idaho points. In Washington you got some revenue, varying according to the sheet I have before me from 6½ cents to 14 cents per hundred pounds, and I cannot understand how any such revenue as that could be derived from that movement on your rates.

Mr. Woodworth: Can you give me those figures that Mr. Johnson filed?

Mr. Teal: I would like to have your ideas of the traffic.

Mr. Woodworth: I want to see those figures and get a good look at them before I answer.

Mr. Teal: Would you have thought that that would have been the result?

Mr. Woodworth: That does not seem strange to me in view of the fact that out of this total of three and one-half million only one and three-quarter million—if you have a statement that shows the number of tons covered by this tariff—

Mr. Teal: You have no rate west of that Idaho line that is under 35 cents a hundred? * * *

Mr. Teal: If this statement produced here shows that to be the fact that you did not receive on your lumber but 15 cents a hundred, these statements are correct, are they?

Mr. Woodworth: I do not say that.

Mr. Teal: I mean the statement that Mr. Johnson filed: if he shows in his statements that your average return on your lumber is 15 cents a hundred, they are correct, are they?

Mr. Woodworth: I do not know whether they are or not.

The Witness (continuing): I believe the statements are correct. I think if you make the deduction of the long haul business covered by this tariff that you will find on the remainder we earned 4 cents or 5 cents or 6 cents a hundred, which would be fairly representative of what we earned on

the lumber in Washington. We hauled a lot of business there at a low rate to tide water west of the mountains. I have not examined the statement, but I think it includes logs, on which the rates are very low.

Mr. Teal: And then if the log rates are in here you would not say that it is fairly representative of the income received from the haul of lumber, would you?

Mr. Woodworth: No, but we have stated that separately, so that nobody can be misled by it.

The Witness (continuing): During the time I have been with the Northern Pacific Railway Company its business has increased constantly, and the net has up to June 30, 1907, and the amount carried in each car has constantly increased; and the train haul, the number of cars in each train has constantly increased. Not withstanding the troubles out west we showed an increase in earnings last year over the year before. I think it is so that the chief difficulty on the Northern Pacific has been the increase of the traffic faster than the facilities we had to handle it. In other words, the railroad has not been able to keep up with the business offering. Our road has shown a very great density of traffic. Our road with the Great Northern is now building a road down the north bank of the Columbia river, one of the purposes being to relieve the congestion, and we have improved it all along and are improving it for that purpose. And when that is all done, many of these difficulties that we have now will naturally be removed.

One of the purposes of building the North Bank road was to relieve the overflow of the Northern Pacific business. Ordinarily, increased business in traffic leads to lowering rather than raising of rates. In our present situation I would not say it was true.

One of the causes of the increased cost of operating our road has been the congestion of traffic. I saw a letter written by Mr. Hannaford in connection with these advances in lumber rates, about the time the letter was written. There has been a good deal of discussion about these lumber rates between myself and Mr. Hannaford.

The lumber business is a very large business in the State of Washington, and is responsible for a large part of our westbound movement, and a very large part of our local movement, both passenger and freight in western Washington, so that if this advance did produce a result to close down that

industry materially, it would produce very serious results all along our line.

Under ordinary conditions I would not think that it would be far from right to say that the handling of less than carload freight is two and a half times the cost of handling carload freight. I do not pay much attention to that because our less than carload business is only about seven per cent. of our total. The less than carload rates are very much higher than the carload rates, and have to be. Our merchandise cars that come out from the eastern terminals are the best paying cars that we have.

On our road we haul our company freight free. In handling the lumber ordinarily on our road it is loaded at the mills and sidings and unloaded by the man that receives it into his yard, or where it is a small business it would be on the track, unless we are unable to get cars from the connecting lines. Ordinarily speaking it is not handled through the terminals. We have to transfer a good deal that goes beyond our own lines.

The change in this rate has been under discussion for a good many years. I do not think there has been a time in the last ten years when it was not in the minds of the men who were responsible for making rates on these different roads. I think it would be pretty hard to tell who made the first suggestion of the advance. I talked with the officials of other roads about it at various times. I talked with the Great Northern people, with the Union Pacific people and the O. R. & N. people and the Burlington people. I talked with the representatives of the Southern Railroad about their lumber. I think it was mostly personal conference.

"Q. What is the Trans-continental Freight Bureau?"

"A. The lines interested in the so-called Trans-continental business joined in paying the salary and expenses of Mr. Countiss and his assistants. He maintains an office in Chicago and publishes our tariffs covering all this Pacific Coast business, and latterly we have, for the sake of convenience—ourselves and the shippers—called upon him to publish these lumber tariffs. It is not a freight association. We have meetings in Mr. Countiss' office when these tariffs are prepared, what we call rate checks. We have those meetings frequently. Those tariffs were not published as the result of a joint agreement or understanding on the part of the officials of each of these railroads, that they would put into effect these rates

between the same points on the same day. The way it happened that they were published through a joint agency, applying to the same points, and going into effect on the same day—was because we asked the Union Pacific to make their change of rate effective on the same day, in order that the shippers at our points would not have raised before the rates on the Union Pacific were raised. To that extent there was an understanding that that would be done. The Great Northern instructed Mr. Countiss to publish its tariffs and make the rates effective on the same day as ours. I do not think there was any understanding with them. They knew we were going to advance our rates. It would be very natural that they should put their rates into effect on the same day for the reasons that I stated. Each railroad has shippers located on its line, and it is not only important that they have proper rates, but that the rates bear proper relation to the rates of their competitors. If we should go ahead and raise our rates on lumber and the rates on the Great Northern remained the same, it would put us out of business for the time being.

Mr. Wimbish: Why did you make a higher rate to Omaha and the Missouri river territory than to St. Paul and the Minnesota territory?

Mr. Woodworth: We do not think we make as much money on the higher rate to Missouri river as we do on the lower rate to St. Paul, because we get practically a mileage pro rate via Billings, and we haul the lumber over the most difficult portions of our line, and the Burlington road has never been disposed to join in any lower rates we have made from time to time to the Missouri river. The Burlington handles this business just as it always has according to its own ideas of what is proper and right as to its rates.

The rate per ton per mile on the Oriental business going east from terminal to terminal is very low. I think generally it is pretty nearly the same per ton per mile as the lumber rate. I think it would figure higher per ton mile and probably lower per car revenue.

The Oriental business was undertaken with the idea that we could create an outbound business which would exceed the inbound, and thus load those empty cars; and, for many years, as this statement shows, we succeeded in that, but the results latterly have been very disappointing, the outbound business has been secured under very great difficulties, and is decreas-

ing. Last year I think we had a very comfortable excess of westbound movement.

On this Asiatic business, you should consider the final result, and if we carry more westbound than we carry eastbound, and are able to thus load cars which would otherwise go empty, the immediate result is in favor of the business. Then, beyond that, suppose, for illustration, that we should have more eastbound business than we had westbound, it might yet be a justifiable thing for us, because of its relation to the operation of these trans-Pacific steamship lines which are very important to our business, for the development of the markets out there. They carry the flour and other products of the country to the Orient, and we would feel that we were justified in making a reasonable sacrifice in order to maintain those markets.

The Oriental business comes through our terminals, has to be unloaded from the ship and loaded on the cars, and sometimes needs storage facilities. We take the freight from the warehouse and put it aboard the car; the ship deposits the cargo in the warehouse. I think the average value of that business per car is greater than lumber.

Generally speaking, canned salmon pays more revenue per car from Puget Sound to St. Paul than lumber pays. If it goes to the Atlantic Seaboard I think it might in some cases pay less than lumber. In those cases where it pays less than lumber, as far as the immediate transaction is concerned, I think we are hauling at a loss. What I mean by the immediate transaction is this: that if we go to Portland, Tacoma and Seattle and engage in the transportation business and undertake to meet competition, we have got to handle all kinds of business and consider the average result rather than the result on particular commodities. The salmon industry is very important. If we did not take care of their business going to the seaboard we would not be able to take care of their business going to various other points where it does pay us a good rate, and we engage in it on the wholesale basis, you might say. We apply the law of averaging to that.

Our eastbound business from points west of the Cascade Mountains is very small; canned salmon is the largest item. Outside of that I cannot think of anything except the smelter products from Everett and Tacoma, that we handle, that is of very much consequence. Of course that is profitable, that loads up pretty heavy per car.

If we shut off the lumber business, I do not think we will have more empties going east than west. On salmon to St. Paul, for local consumption, we have what is termed a blanket rate. I think it is 75 cents to all points, St. Paul and the east. Salmon takes the canned goods rate of 75 cents from Denver to Chicago and the Seaboard. Not only salmon but all articles of canned goods takes the blanket rate to Chicago, New York, Boston and all points east.

The floods that occurred on the Northern Pacific last year do not occur every year, but they occur frequently. There is more or less of that trouble every year.

I am familiar with the operations of the O. R. & N. Railroad.

(It is conceded by the complainants that there are frequent floods on that river.)

When I returned to the O. R. & N. Railroad in 1894, it was completely washed out for a good portion of the distance between Portland and Umatilla, and the estimate which had been made as to the cost of repairing it was so high that the road was forced into a receivership.. That is, the receivership of Mr. McNeil as against the receivership of Clark and others. It caused a default on the interest on the bonds, and they appointed Mr. McNeil as receiver.

From Portland to Umatilla, the distance is 189 miles. A large part of it is along the Columbia river. When I say washed out, I mean the water was many feet above the track. It destroyed the embankment and carried away a great many bridges, and did a great deal of damage. That was due to the rise in the Columbia river.

The flour business is increasing in volume at Portland, Tacoma and Seattle very rapidly. It is practically changing the cargo wheat business; in place of exporting wheat to Liverpool and other foreign ports the businses is now going out in the form of flour from mills located in Portland, Tacoma and Seattle. In recent years very little wheat has been exported. A great part of the flour goes to the Orient by these steamship lines. The Great Northern Railway Company operates one line, the O. R. & N. Line I think operates a trans-Pacific steamship. The Northern Pacific does not. We work a connection with independent lines who are attracted to Puget Sound by this traffic contract under which they are permitted to handle through business.

The first line that was undertaken to be started from the

northwest was from Portland. Most of the contracts, I think all of the contracts, give the steamship lines the rate-making power on inbound business, subject to certain provisions as to the minimums. They are obliged to have that because all the business which they contract for is in direct competition with the Suez Steamship Line. The Pacific Coast consumed comparatively very little Asiatic goods. I do not think any one of these lines, or any two steamers, could be maintained to operate regularly throughout the year. I do not think that steamers could be maintained for handling the Asiatic business which the North Pacific Coast would consume. Of course you might say that if they did not have these other sources of revenue they might get a higher rate on flour and thus make flour pay the expense of the round trip voyage, but that would be to the great disadvantage of the man who sells the flour. So that these eastbound rates on Oriental business are practically forced rates. The same thing is true of the westbound rates. Generally speaking, the general rate adjustment on transcontinental merchandise from St. Paul to the Pacific Coast is equal between the Union Pacific and the Northern lines. The Union Pacific makes the same rate as we do from St. Paul. The same is true of eastbound business other than lumber. That has always been true. The Union Pacific, however, have never met the lumber rate to St. Paul. From 1893 to date there has never been a period in which the O. R. & N. made a forty-cent rate to Omaha. It made, I think, a rate of forty-five cents during the McNeil receivership. At that time I think everybody was very hard up for business and the earnings of the O. R. & N. were very small.

In July, 1904, receivers' certificates were authorized. I think they were not issued. Everybody trusted the O. R. & N. for several months. The 45-cent rate was afterwards raised to 50 cents. It was in effect three or four years.

It has never been possible, so long as we maintained the 40-cent rate to St. Paul, for the Union Pacific to get anything higher than a 50-cent rate to Chicago and do the business at all, because the Chicago rate and the rate to all of this territory east of the Missouri river makes on our forty-cent rate to St. Paul; and the 50-cent rate to Chicago, which the Union Pacific has maintained, has been a rate forced on it as the result of our 40-cent rate to St. Paul. Of the 50-cent rate to Chicago, we get our local to St. Paul. The other lines take the ten cents. That has been their local rate gen-

erally, and that is influenced, I might say, by the lake transportation conditions. The lumber originates in the northern part of the state contiguous to Duluth and is largely shipped via Duluth to Chicago. Our rate is 40 cents to Duluth. That lumber goes from Duluth and contiguous points by lake shipments to Chicago. No lumber from the coast goes that way.

Of the proposed advance in rates none goes to the roads east of St. Paul.

A. G. MAGUIRE (Record page 1906) testified as follows:

I am assistant general freight agent of the Great Northern Railway. I have caused to be prepared a statement showing the loaded and empty car movement on the Great Northern between Havre and Seattle. The statement is prepared from 1893 to 1907, inclusive, for the fiscal years ending June 30th, each year; shows the loads and empties, separately, the westbound and the eastbound, and the number of miles moved for each class.

We reduced the mileages down to a unit to ascertain an equivalent movement of the entire distance for one day per annum. On that basis for 1903 the loads westbound were 11.7 daily. The eastbound were 7.5. The empties westbound were 1.9. The eastbound empties were 6.1.

In 1907 the loads westbound were 87.2. The eastbound loads were 99.6. The westbound empties were 26.3; and the eastbound empties were 6.5. The figures for the westbound loads for 1907 aggregate 27,746,618 miles. That is, one car moved that distance. We have simply reduced that by the mileage and by the number of days in the year.

I have prepared a statement showing the loaded and empty car movements through the Cascade tunnel. It was prepared from the daily working reports in the office of the superintendent of transportation for the six months ending October 31, 1907. That shows the average per day of loads westbound, 91; empties westbound, 48. Loads eastbound, 128; empties eastbound, 3.

(The statement referred to was received in evidence and marked "Maguire Exhibit No. 1.") (Rec. P. 1908.)

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I have prepared a statement showing the movement of Asiatic tonnage over the Great Northern. This shows, briefly, that during 1896, the first year we handled any Asiatic tonnage, our exports overland amounted to 2,703 tons. The imports overland amounted to 1,296 tons. For 1905, the largest year, on account of the war, our exports amounted to 113,238 tons, and our imports to 16,973 tons. The average for the eleven years was, I have just figured up by pencil here a little while ago. It makes the exports about 33,000 tons and the imports about 12,500 tons. For last year, 1906, which was smaller, the exports were 54,978. The imports were 30,722 tons. The average of the earnings per hundred weight on the export business for all these years were 29.5 cents; on the imports, 64 cents.

(Statement referred to marked "Maguire Exhibit No. 2, and received in evidence.) (Rec., p. 1909.)

The statement of Mr. Woodworth in his testimony is substantially accurate as applied to the Great Northern, as regards the conditions. The tonnage, of course, is different.

I have prepared a statement showing the comparative earnings of a car engaged in hauling lumber with a car engaged in hauling other commodities. We picked out commodities which were handled in about the same manner as the lumber and shingles, that is, transcontinental freight, and eastbound we used copper, salmon, silk, matting, lumber and shingles. That is practically all the large commodities. The silk and the matting represent the lowest class Asiatic and the highest class Asiatic. On the westbound movement we used various commodities which move in volume on the coast, such as radiators, fruit jars, canned goods, machinery, furniture, stoves, butter and eggs, steel rails, pianos, iron and steel pipes, and packing house products. We used two copper shipments here, one from Crofton, on British Columbia Island, where our earnings per car were $412.28, for all the cars we moved from January 1st to September 30th. Salmon, from all points, all the salmon during the month of September, averaged $274.78 per car.

All the copper from Grand Forks, British Columbia, from April 1st to September 30th, 1907, averaged $405.87 per car. All the silk from September 1st to September 30th, averaged $767.39 per car. 100 cars of matting—that is, just as they came to us, without cutting out any—averaged $150.43 per car.

The western lumber from Montana and the west, which arrived at the Minnesota Transfer during August, 1907, averaged $194.67 per car. The shingles during the same period, at the same point, averaged $176.33 per car.

The through rate on matting per 100 pounds is $1.25 in carloads, and $1.50 in less than carloads. That is the through rate from Asiatic ports of call to overland common points. On a shipment to St. Paul on a carload rate, we would get 62½ cents. On a shipment to the Atlantic seaboard we would get a little less.

(Statement offered in evidence and marked "Maguire Exhibit No. 3.") (Record p. 1913.)

We have had a statement prepared by the accounting department showing the increase in lumber shipments on the Great Northern Railway as shown by earnings. This shows the Great Northern Railway earnings on all lumber and shingles originating at points Leavenworth, Washington, and west; also from stations Lowell to Leavenworth, inclusive, separately, for the fiscal years 1896 to 1907, inclusive.

During 1906 the lumber earnings were $134,508.54. During 1907 the lumber earnings were $1,208,618.29. Shingles increased from $610,722.29 to $1,848,563.04.

(Statement received in evidence and marked "Maguire Exhibit No. 4.") (Record page 1914.)

MAGUIRE, EXHIBIT 4.

STATEMENT SHOWING GREAT NORTHERN RAILWAY EARNINGS ON LUMBER AND SHINGLES FROM 1896 TO 1907 (FISCAL YEARS ENDING JUNE 30), COVERING EAST-BOUND SHIPMENTS ORIGINATING AT POINTS LEAVENWORTH, WASH., AND WEST.

COAST LINE, INCL. EVERETT.

Years	Lumber	Shingles	Years	Total Lumber	Total Shingles
1896	$134,508.54	$610,722.29	1896	$138,710.33	$714,068.65
1897	126,045.82	642,072.41	1897	129,567.24	738,511.21
1898	166,876.12	802,632.83	1898	178,441.78	946,373.59
1899	136,860.42	777,220.63	1899	153,750.13	951,022.88
1900	360,320.26	968,679.68	1900	457,917.75	1,214,437.58
1901	201,619.13	1,155,199.52	1901	274,048.03	1,463,775.72
1902	381,505.30	1,557,578.28	1902	505,769.76	1,885,055.60
1903	432,619.65	1,843,609.81	1903	625,140.12	2,144,590.68
1904	368,074.61	1,811,388.30	1904	571,875.81	2,068,952.44
1905	503,168.91	1,984,800.94	1905	717,526.74	2,203,275.88
1906	1,162,797.58	2,047,684.81	1906	1,593,191.81	2,272,273.65
1907	1,208,618.29	1,848,563.04	1907	1,737,523.12	2,060,119.65

LOWELL TO LEAVENWORTH, INCL.

Years	Lumber	Shingles
1896	$4,201.79	$103,346.36
1897	3,521.42	96,438.80
1898	11,565.66	143,740.76
1899	16,889.71	173,802.25
1900	97,597.49	245,757.90
1901	72,428.90	308,576.20
1902	124,264.46	337,477.32
1903	192,520.47	300,980.87
1904	203,801.20	257,564.14
1905	214,357.83	218,474.94
1906	430,394.23	224,588.84
1907	528,904.83	211,556.61

RECAPITULATION.

Years	Total Lumber and Shingles	Per Cent. Increase above 1896
1896	$852,778.98	
1897	868,078.45	1.7%
1898	1,124,815.37	31.9%
1899	1,104,773.01	29.5%
1900	1,672,355.33	96.1%
1901	1,737,823.75	103.7%
1902	2,400,725.36	181.5%
1903	2,769,730.80	224.7%
1904	2,640,828.25	209.7%
1905	2,920,802.62	242.5%
1906	3,865,465.46	353.2%
1907	3,797,642.77	345.3%

(Statement marked "Maguire Exhibit No. 5," received in evidence) (Record p. 1914), showing increase in wages on the Great Northern.

Cross-Examination.

When I say we prepared these statements, I mean they were prepared in my office under my personal supervision. I prepared a good many of them myself personally.

The Great Northern does not haul as much lumber from the Coast as the Northern Pacific. During the last winter we had a frightful congestion; I don't know whether it was worse than the Northern Pacific or not. I think we took several train loads of lumber from the Northern Pacific and hauled them across to the Transfer for them when they were so congested, and when our lines could possibly handle them. In making our figures showing earnings from lumber, the first column, the coast line, including Everett, covers eastbound shipments originating Leavenworth and west. Leavenworth is just this side of the tunnel, and those are the Great Northern earnings on that lumber from the records which are kept up from year to year.

We have very often suffered from a car shortage to supply cars for this lumber. Our export Oriental trade has always been much greater than our import trade.

The cars carried west with export business in 1906 were 54,000, in round numbers; whereas our eastern or import business was only 30,000. That made a difference of 20,000 tons. It gave us that car capacity to help with other eastbound products. I think our Pacific Coast lumber will run a little higher in weight than the Montana lumber. I do not believe it would run as much as $30 a car more. I think it would run something over 50,000 pounds. The average of our Oriental trade, take for instance matting; pays us $150 a car; that is the average for that 100 cars. That comes over the whole line; from the coast to the Transfer. We take the matting at the ship's tackle. The cars are placed right there. From the tackle to the cars, the transfer is at our expense. I should say, offhand, that a car of matting is worth about $2,000. I would say that fairly represented the value of this movement from which we receive $150 a car.

We pay every few days for burning up a car of lumber. It is exposed to the danger of an ordinary derailment and from transferring. We approve a good many claims for that sort of thing when the car was derailed and smashed and not burned.

The oriental statement shows that the average revenue is 64 cents a hundred pounds for 11 years on the oriental trade. In 1906 it was 71.98 cents per hundred pounds.

I had nothing to do with the making of this advance in rate.

Coming to copper, the Great Northern earnings per car is $412. Copper is worth 12 to 25 cents per pound. It has undoubtedly a very much higher value. Our movement of copper is nothing like as much as the movement of lumber. The rates on copper are based on the released valuation of $100.00 per ton, and about 35 tons to the car, from Crofton, and 40½ tons per car from Grand Forks, according to this statement.

In the Asiatic trade we make a through rate to the Orient. We have to divide the through rate from St. Paul to Japan with the steamship lines, the same as we would divide it with another railroad. We just get our divisions and that is all that concerns us.

The lumber we took from the Northern Pacific was taken east from the tunnel.

There was then read in evidence the following portion of the complaint brought by the Atlas Lumber Company against the Northern Pacific Railway Company, and verified October 28, 1907, reading as follows:

"For the sixty days last past your orator has in the usual course of business, as aforesaid, received orders from its customers at different points within and along the line of the said Northern Pacific Railway within the states aforesaid for large amounts of lumber and other timber products, to-wit: the capacity of more than one hundred cars per month, and during all of said time your orator has had the lumber and other timber products at its said mill at McMurray ready to fill said orders as received, and has been at all times, ready, able and willing to fill said orders."

C. F. WHITE, witness for the defendants, was examined (Record page 1951):

I have been a member of the Shingle Mills Bureau from the time it was incorporated. It is an association of shingle manufacturers of the western part of the State of Washington. We meet for various purposes, sometimes for one purpose and sometimes for another. As the result of meetings which we hold we have periodically resolved in the last several years to shut down from time to time in order to curtail production, no one being bound by the recommendations, but as a general notion that it is a wise thing to shut down. You

might say that that is the rule all over the land as to the manufacture of shingles. I have been a manufacturer of shingles almost since I was a boy, and never during that time have I run my shingle mill in the winter, excepting a portion of the time since I have been in the State of Washington.

In 1907 the shingle manufacturers of Washington had a meeting. I don't know what was done as to the question of a shut down, because I did not go up to the meeting, although it was in my office building—I did not go up excepting about five minutes before it closed. I think at that time the question that was staring them in the face was the question of this advance in rates. Some resolved to shut down and some did not. There are between 400 and 500 shingle mills in the State of Washington, and some of those men belong to the association or to the bureau, and some do not. Just what was done on the question of the shut down at that time, I don't know. I shut down one of our mills about three weeks ago, and I shut down two of them about five or six weeks ago. It is true that many millions of shingles have been shipped to California and from there sent by rail to interior points. I do not think a great deal of territory has been reached by such routings. The shipments that have been made to San Francisco have been reshipped from San Francisco to Texas points and to Missouri River points, that is, down in some portions of Kansas, Oklahoma, and down in through there, were shipped from our state for the reason that we could not get cars to ship them by rail to the east, and we could ship to San Francisco and the Southern Pacific would furnish cars there to load them and ship them south or east. I do not think it opened up any new territory to speak of. At certain seasons of the year there was quite a movement of shingles that way. The shingles had to pay the rate from Puget Sound down to San Francisco. It was a question of demand in the east, by reason of the fact that we could not get cars to ship our shingles east, and where a very small proportion of the shingles were going east, the prices were higher, and they would stand almost any kind of a rate east. I would not say as to where the shingles were shipped.

Taking our own situation, we have orders that we took for lumber 12 months ago, orders that were taken in 1906, that we have not shipped, for the reason we could not get the cars to ship those orders. We could ship shingles and have shipped some shingles in the meantime, for the reason that we have not taken an order for a car of shingles until we had the car

loaded, because if we took an order for a car of shingles we did not know when it was possible to ship them, and they might be 25 per cent. higher or 25 per cent. lower at the date of shipment, and for that reason we only sold shingles after we had them on the cars loaded east. As a matter of fact, taking our own business, we shipped less shingles during the year 1906 than in previous years of the shingle trade. I do not know what the general movement was.

My judgment would be, speaking from my best judgment and belief, that shingle shipments have been much less this year than usual. Shingles dropped, I think, about one dollar a thousand within the last six or eight weeks. We sold some shingles as high as $3.00, Star A stars. They have now dropped to $2.00, and I think some shingles have sold as low as $1.60, but I do not know positively as to that.

R. B. MILLER, called as a witness on behalf of the defendants (Record page 1964).

I am General Freight Agent of the O. R. & N., and the Southern Pacific lines in Oregon. I have been connected with the Traffic Department of the O. R. & N. Railroad about 20 years, and with the Southern Pacific lines in Oregon about four or five years. I have made some effort to ascertain the average prices made by the Portland mills to jobbers for wholesale and retail delivery, of the prices of logs at the mill. I have a table showing those facts, as I have ascertained them and checked them up from the various jobbers from the year 1893 down to date, showing the price of stumpage as I understood it.

(Statement offered in evidence, being as follows):

MILLER EXHIBIT 1.

Following is a statement showing average price of lumber and logs at Portland and the price for stumpage:

AVERAGE PRICES MADE BY PORTLAND MILLS TO JOBBERS AND FOR WHOLESALE AND RETAIL DELIVERY.

Year	Common	No. 1	No. 2	No. 3
1893	$7.00	$18.00	$13.00	$9.00
1894	6.00	16.00	12.00	8.00
1895	6.00	15.00	10.00	7.00
1896	6.00	16.00	11.00	8.00
1904	7.50	22.00	18.00	14.00
1905	9.00	24.00	20.00	16.00
1906	15.00	30.00	25.00	20.00
1907	13.00	28.00	23.00	18.00

Year	Price of Logs at Mill	Stumpage
1893	$4.25	15c. to 50c.
1894	$3.50 to $4.50	15c. to 50c.
1895	4.00 to 5.00	15c. to 50c.
1896	4.00 to 5.00	15c. to 50c.
1904	5.00 to 7.00	15c. to 50c.
1905	5.50 to 7.50	15c. to 50c.
1906	9.50 to 12.50	75c. to $2.25
1907	7.50 to 10.50	.....

I have also prepared a table showing the old rates from Portland to various places, and the rates per ton per mile, the new rate, and the advance.

The statement being as follows:

MILLER EXHIBIT 2.

LUMBER.

Portland to	Mileage	OLD RATE	
		Rate in Cents per 100 Lbs.	Rate per Ton per Mile
Denver	1,390	40	.0057
Omaha	1,799	50	.0055
Kansas City	2,030	50	.0049
Chicago	2,289	50	.0043
St. Louis	2,307	52.5	.0045
Coburg, Ore., to			
Denver	1,505	40	.0053
Omaha	1,914	50	.0052
Kansas City	2,145	50	.0046
Chicago	2,404	50	.0041
St. Louis	2,422	52.5	.0043
Baker City, Ore., to			
Denver	1,033	35	.0068
Omaha	1,442	40	.0055
Kansas City	1,673	45	.0054
Chicago	1,932	50	.0052
St. Louis	1,950	49.5	.0051

SHINGLES.

Portland to			
Denver	1,390	50	.0072
Omaha	1,799	60	.0067
Kansas City	2,030	60	.0059
Chicago	2,289	63	.0055
St. Louis	2,307	62.5	.0054

Portland to	Mileage	NEW RATE		ADVANCE	
		Rate in cts. per 100 lbs.	Rate per ton per mile	Rate in cts. per 100 lbs.	Rate per ton per mile
Denver		50	.0072	10	.0015
Omaha		55	.0061	5	.0006
Kansas City		55	.0054	5	.0005
Chicago		60	.0052	10	.0009
St. Louis		60	.0052	7.5	.0007
Coburg, Ore., to					
Denver		50	.0066	10	.0013
Omaha		55	.0057	5	.0005
Kansas City		55	.0051	5	.0005
Chicago		60	.0049	10	.0008
St. Louis		60	.0049	7.5	.0006
Baker City, Ore., to					
Denver		40	.0077	5	.0009
Omaha		43	.0059	3	.0004
Kansas City		43	.0053	*2	*.0001
Chicago		53	.0055	3	.0003
St. Louis		52.5	.0054	3	.0003

SHINGLES.

Portland to					
Denver		60	.0086	10	.0014
Omaha		65	.0072	5	.0005
Kansas City		65	.0064	7	.0006
Chicago		70	.0061	7	.0006
St. Louis		70	.0061	7.5	.0007

*Reduction.

NOTE.—Coburg is a point on Southern Pacific Company 115 miles south of Portland and takes Portland rates on shipments to Colorado and East.

I have also prepared a table showing rates on various places in the United States on lumber, the rates per hundred pounds, the rate in cents per mile, and the average rates per ton per mile of the roads making the tariff.

The statement offered in evidence and marked "Miller Exhibit No. 3." (Record page 1974.)

My best information now as to what are the representative lumber points in Louisiana, Mississippi and in the south is that in Louisiana they are Baldwin, Berwick, Franklin, Jeanerette, Morgan City, New Iberia, Patterson, Lake Charles, St. James, Alexandria, Plaquemine, Whitecastle, Monroe, Baton Rouge, Leesville, Kentwood, Pickering, Bogalusa, Garyville, Ruddock, Coalfox, Winnfield and Barnes Creek. In Mississippi, Lumberton, Hattiesburg, Laurel, Meridian, Brookhaven, Osyka, Sardis and Bond. In Texas, Beaumont, Nona, Nacodoches, Orange, Rockland, Livingstone, M. Cannard Mills, Dayton. In Arkansas, Baker, Buchanan, Stamps and Cornie.

I have a statement showing the interchange of cars with the Oregon Short Line at Huntington, Oregon, for the year 1906.

From the Oregon Short Line during that year the O. R. & N. received 30,898 loads, 8,704 empties, making the total number of cars received 39,602. We delivered to the Short Line 37,081 loads and 493 empties. In this statement we have shown the distinction between coal cars, flat cars, stock cars, refrigerator cars and box cars, and the number of cars delivered and received, and the number of cars interchanged, received from the Short Line during that period.

Statement offered in evidence and is as follows:

Following is statement of cars interchanged with the O. S. L. at Huntington for year 1906:

	Loads.	Empties.	Total.
Coal Cars	5,681	619	6,300
Flat Cars	1,083	2,412	3,495
Stock Cars	3,904	1,541	5,445
Refrigerator	970	482	1,452
Box	19,260	3,650	22,910
Total	30,898	8,704	39,602
Delivered O. S. L.	37,081	493	37,574

I have a statement showing the equipment of open cars, distinguishing between flat cars and coal cars, received at Huntington, and also a statement showing the shipment of commercial lumber from Oregon points for the year 1906 to various points and places, from various roads. The figures show that there were delivered to the Oregon Short Line 17,709 cars of lumber for the year 1906. Of those cars 1,018 orig-

inated on the Northern Pacific and Great Northern Railroads. The difference, or 16,691 loads, represents lumber that originated on the O. R. & N., Southern Pacific and Astoria & Columbia River roads. The reason that I have separated the tonnage originating on the Northern Pacific and Great Northern is because we do not return any empty cars to those lines. The lumber we get is the result very largely of cars being empties on their lines. There was delivered to the Short Line 37,081 loads of all kinds of freight. There was received from the Oregon Short Line 30,898 loads. The difference of 6,183 cars represents the number of cars which it was necessary to haul empty from Huntington in order to take care of the preponderance in the eastbound tonnage.

Those cars include 1,541 stock cars and 482 refrigerator cars, and in deducting the stock cars and refrigerator cars from the entire number hauled empty, will leave 4,160 box cars and open equipment available for east bound shipments of lumber.

The number is 4,160 cars, or substantially 25 per cent. of the total number of cars of lumber that originated on the lines of the O. R. & N. Company, the Southern Pacific, and the A. & C. railroads. In other words, for every four cars of lumber shipped from points on the O. R. & N., Southern Pacific and A. & C. railroads, to points east of Huntington, it was necessary to haul one empty car west from Huntington. That is all open cars and coal cars. The statement correctly states the facts as to the number of open cars received at Huntington which were handled west empty, and the correct percentage of box cars received at Huntington and handled west empty.

Of the open equipment we received under load, 6,764 cars; and, empties, 3,031. Of the total equipment received at Huntington, 37 per cent. was empty or hauled west empty from Huntington. Of these roads received at Huntington, 5,681 were coal cars, and 1,083 were flat cars. We delivered no empty coal cars to the Short Line at Huntington; we received 619. We received 2,412 empty flat cars. Of the box cars received at Huntington, 3,650 were empty. That is about 15 per cent. of the total box car movement.

I have a statement showing the amount of commercial lumber in the year 1906 on the O. R. & N., Southern Pacific, A. & C. River Railroad, and the Oregon Water Power, and from the Southern Pacific and Astoria and Columbia River points, by the Southern Pacific, and the various states to which such stuff moved.

Statement referred to introduced in evidence is as follows:

"11. Of the equipment received at Huntington, the following consisted of open cars:

	Loads	Empties	Total
Coal cars	5681	619	6300
Flat cars	1083	2412	3495
Total,	6764	3031	9795

Representing an empty car movement of 30%.

"Approximately 50% of the lumber is loaded on open cars. 30% of the open cars received at Huntington were handled west empty.

16% of the box cars received at Huntington were handled west empty.

22% of all cars received at Huntington were handled west empty.

"12. Following is statement showing movement of commercial lumber from Oregon points for year 1906:

	From O. R. & N. Points.	From S. P. A. & C. and O. W. P. via Portland and O. R. & N.
Oregon and Washington	1,765	135
Idaho	2,001	250
Utah	2,712	2,528
Colorado	908	1,106
Montana	33	7
Wyoming	555	535
California and Nevada	34	30
Nebraska	525	401
Kansas	297	110
East of Missouri River	1,099	2,692
Total	9,929	7,794

	From S. P. and A. & C. R. Points via S. P.	Total.
Oregon and Washington	†1,200	3,100 cars.
Idaho	....	2,251 cars.
Utah	....	5,240 cars.
Colorado	....	2,014 cars.
Montana	....	40 cars.
Wyoming	....	1,090 cars.
California and Nevada	7,100	7,164 cars.
Nebraska	....	926 cars.
Kansas	....	407 cars.
East of Missouri River	....	3,791 cars.
Total	8,300	26,023 cars.

†Approximate.

"Of the total number of cars shipped, or 26,023, only 8,268, or 32%, were destined to points affected by the advanced rates of Nov. 1st.

"NOTE.—Only 468 cars lumber were shipped from mills on the O. R. & N. in Washington."

That shows that there were shipped to points in Oregon on the O. R. & N. lines, 9,929 car loads of commercial lumber, and from the Southern Pacific, Astoria and Columbia River, via Portland, and the Oregon Water Power, in connection with the O. R. & N. Company, 7,794 cars. The movement from the Southern Pacific and points in connection with the Southern Pacific, south through Ashland, 8,300 cars; that made a total lumber movement of 26,023 cars, from all points in the State of Washington. That is by rail, either involved in this case or south, that is by rail. That is commercial lumber.

We have shown the various states to which the lumber went. The statement correctly states the figures taken from the actual billing. I have undertaken to inform myself as to the amount of lumber cut in Oregon in 1906.

According to the information I have been able to obtain, it was about two billion feet. In Washington it was approximately four billion feet. Of the amount cut in Oregon in 1906, approximately 1,100,000,000 feet went out by water. And my estimate of the number of cars shipped from Oregon by rail is about 26,000 cars; from Washington about 76,000 cars for the year 1906. The total lumber cut of the Portland mills in 1906 is estimated at 643,000,000 feet. 240,000,000 feet of that went out by water. 150,000,000 feet was sold locally. 65,000,000 feet were shipped to California and Nevada; and Oregon, Washington, Idaho and Utah got 129,000,000 feet. The total shipped by water, sold locally, shipped to California and Nevada, and points in those states, not affected by any change in rates was 584,000,000 feet. That leaves the difference between the total cut and the amount that went to those states, 69,000,000 feet, or about ten per cent. of the total cut.

I have aimed to work up these figures pretty carefully and have taken them from our records, so far as we had records, and then to ascertain the facts by diligent inquiry among millmen, as to their water shipments and rail shipments, and from the trade papers.

I have prepared a statement showing the comparison of rates on lumber and other Pacific Coast products, from Portland to Denver, Omaha, Kansas City and Chicago, both in rates and in rates per ton per mile. That statement is correct.

Statement introduced in evidence and is, as follows:

"13. Following is comparison of the rates on lumber and other Pacific Coast products from Portland:

From Portland to COMMODITY.	DENVER.		OMAHA.	
	Rate in Cents per 100 Lbs.	Rate per Ton per Mile.	Rate in Cents per 100 Lbs.	Rate per Ton per Mile.
Lumber	.50	.0072	.55	.0061
Canned Goods	.75	.0108	.75	.0083
Dried Fruit	1.00	.0144	1.00	.0111
Wool			1.00	.0111
Hops	1.50	.0216	1.50	.0167
Hides, Green	.75	.0108	.75	.0083
Distance	1,390		1,799	

From Portland to COMMODITY.	KANSAS CITY.		CHICAGO.	
	Rate in Cents per 100 Lbs.	Rate per Ton per Mile.	Rate in Cents per 100 Lbs.	Rate per Ton per Mile.
Lumber	.55	.0054	.60	.0052
Canned Goods	.75	.0074	.75	.0066
Dried Fruit	1.00	.0099	1.00	.0087
Wool	1.00	.0099	1.00	.0087
Hops	1.50	.0148	1.50	.0131
Hides, Green	.75	.0074	.75	.0066
Distance	2,030		2,229	

Canned goods under the classification includes salmon and all closes of canned goods.

The word "distance" in the statement gives the correct distances on our line to Denver, Omaha, and Chicago, in connection with the Union Pacific.

Cross-Examination.

I have been with the O. R. & N. Railway Company 20 years and have been reasonably familiar with its business; I have charge of the traffic rates and know the reason why I make them.

From Portland, which is a water port, ten per cent. of the

lumber shipped from there went to this affected territory; approximately ten per cent. of the cut of 1906.

I do not wish the Commission to understand from that, that that is a fair statement of the lumber that goes from Oregon to the affected territory. From mills in the State of Oregon we estimate that approximately 32 per cent. is destined to the territory affected by the advance of rates of November first, and that includes this ten per cent. from Portland. The 32 per cent., you understand, is the percentage of the total movement by rail that was destined to the territory affected by the advanced rate. I have not undertaken to estimate the percentage of the entire cut of all the mills.

In connection with this empty car movement west bound, after making deductions for stock and refrigerator cars, it left for east bound lumber shipments during the course of the year, forty-one hundred sixty cars, for loading at points on the lines of the O. R. & N., the Southern Pacific and the A. & C. roads, for lumber shipments. Those cars come into Huntington empty all through the year. At this season of the year we probably would haul them empty from Huntington into eastern Washington, a distance of substantially from three to four hundred miles. We could haul them into Umatilla just as well, to some extent. We load them with wheat and bring them to Portland. I would not exactly say that these cars that came into Huntington moved empty into Portland for lumber, but I do say that the empty haul on those cars, even loaded with grain for Portland, is as great for Huntington as though they had been moved empty into Portland.

Mr. Teal: Do you haul ore from the Coeur d'Alene mines?

Mr. Miller: Yes.

Mr. Teal: What sort of cars?

Mr. Miller: Box cars.

Mr. Teal: And no other cars?

Mr. Miller: Generally speaking, no.

Mr. Teal: Are any of these cars used for that purpose that come back empty?

Mr. Miller: Some are hauled empty, I think, for ore loading.

Mr. Teal: Do you haul any ore from Baker City?

Mr. Miller: Very little.

Mr. Teal: Then, this statement is not correct, when you say "leaves for eastbound lumber shipments, 4160 cars"?

Mr. Miller: That is practically correct.

Mr. Teal: Correct with the qualifications and explanations you have given?

Mr. Miller: Yes, sir.

Mr. Teal: Do you know as a matter of fact what your percentage of empty car movement was in 1907?

Mr. Miller: I do not.

Mr. Teal: You were the General Traffic Manager, were you not?

Mr. Miller: Freight Agent.

Mr. Teal: Do you know what your empty car movement was 1906?

Mr. Miller: Taking the line as a whole, it was about what is given there.

Mr. Teal: Do you know what it was in 1900?

Mr. Miller: No.

Mr. Teal: Do you know what it was as compared with the Union Pacific?

Mr. Miller: No.

Mr. Teal: Do you know what it was as compared with the Northern Pacific?

Mr. Miller: No.

Mr. Teal: Would you say that your empty car movement was more or less in 1907 than in 1906?

Mr. Miller: No, I do not know what it was.

Mr. Teal: Suppose I told you that the reports show that your empty car movement was but 18.76 per cent. in 1907; would you say that was a pretty fair showing?

Mr. Miller: I would say, according to my idea about what the entire empty movement is, taking the entire line as a whole.

Mr. Teal: Do you know whether your road, the O. R. & N., handles a larger percentage of forest products than the Shore Line does?

Mr. Miller: Well, I do not know whether it does or not.

Mr. Teal: Do you know whether your road handles a larger percentage of forest products than the Union Pacific Railroad?

Mr. Miller: You mean a larger percentage as compared with the total tonnage?

Mr. Teal: Yes.

Mr. Miller: I should think the O. R. & N. handle a very much larger percentage than the Union Pacific or the Oregon Short Line.

Mr. Teal: Then if the empty car movement is due to the handling of lumber it would necessarily be reflected in the empty car haul, would it not?

Mr. Miller: Yes, I think so.

Mr. Teal: Do you know what the empty car haul was for the Union Pacific for 1907?

Mr. Miller: No.

Mr. Teal: Do you know what it was for the Short Line?

Mr. Miller: No.

Mr. Teal: Then, if it turns out that it is very considerably more than this, what would you say then?

Mr. Miller: I can only speak of course for the lines which I represent, the lines west of Huntington.

Mr. Teal: The percentage of the empty haul on the Union Pacific in 1906 was 25.20. Yours for 1906 was 20.50. Now do you think that this lumber movement on your road has troubled you any?

Mr. Miller: I do think the lumber movement has troubled us.

We have about 1200 miles of rail line. In 1897 it was substantially the same. The capital stock of the company is $24,000,000 of common, $11,000,000 of preferred, and our outstanding bonds are $22,000,000. Our mileage has increased some, perhaps one hundred miles, since 1897. I think the freight earnings on the O. R. & N. have increased from $2,500,000 in 1897 to about $8,900,000. Our haul of tons to the train has increased very largely in the same period. Our rates are not based on the earnings of the road. The amount invested in the road does not enter into them. The cost of the road does not enter into them. The increase in traffic may enter into them. Generally speaking, I should say that it is true the fact that we carry heavier trains, more tonnage, locomotives are capable of handling more freight, the cost of operation is reduced, does not enter into rate making at all.

The earnings of the O. R. & N. for the last ten years have constantly increased. Its gross earnings constantly increased, but its net earnings have not. Taking last year as the basis, the year ending June 30, 1907, our gross earnings increased about a million dollars, while our net earnings decreased one hundred thousand dollars. There was no particular reason that I know of for that, except the operating expenses were higher than they were the year before. The operating expenses were about one million dollars more than they were the year before.

The average rate per ton per mile on all lumber handled between all points on our line, in Oregon, Washington and Idaho, 7.23 mills per ton per mile. In arriving at that figure we take into account our transportation of this through lumber to Huntington. Through lumber as well as local lumber. All lumber handled.

The products of mines figured on the per ton and the ton

mile basis takes a lower rate than lumber does. That is ore, coal and stone, and miscellaneous freight of that character, when averaged together, makes a lower rate per ton per mile on the whole than the figures given for lumber, lower than 7.23 mills. On ore and concentrates I should say the average rate per ton mile in 1906 was approximately 6.5 mills. I don't know what we were earning on coal.

I assume that the statement is correct, that it was 4.3 mills. The ore and concentrates represent about 20 per cent. of our entire tonnage, but we handled a very large volume of crude ore from the mines to the smelters in the Coeur d'Alene district, for short distances. The ore is hauled from the mines in the Coeur d'Alene district, to Wallace and to the concentrators there. We haul some concentrates to Colorado.

In the last ten years the O. R. & N. Road has been very materially improved. The freight traffic during the last two years on the O. R. & N. has been congested at times. The amount of business that was being done was substantially all that could be handled satisfactorily to the traffic department. This congestion caused considerable difficulty in handling business. Our company does not charge for company freight.

Re-direct Examination.

The ore and concentrates are silver and lead ore, and are moved from the mines to the concentrator, where it is reduced, and then shipped to the eastern smelters. We get the handling of the concentrates, and they pay what we think is a low rate.

The Oregon Short Line handles a large volume of coal, and the Union Pacific carries a considerable quantity of coal. There is nothing that could move back locally in the Short Line territory in coal cars in any considerable quantity, except mining timbers. Probably some of those might be moved. They are used in mines for lumber. We load lumber in coal cars; any rough lumber, large timbers, ties. To some extent we load those empty coal cars. Coal cars that become empty in the west are loaded altogether with lumber for the east. We do not send back any empty coal cars at all.

I do not know of any movement of traffic on the Short Line which would load empty coal cars. The Navigation Company has no coal on its lines and, therefore, the coal which we handle is simply for local distribution in those states and carried at a very low rate. It comes in competition with wood,

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and also in competition with the coal that is produced in western Washington and British Columbia. Shore hauls from the Northern Pacific and the Spokane & International and Canadian Pacific lines. The coal that we handle comes very largely from Rock Springs, Wyoming, and Diamondville, and Kemmerer.

The Potlatch Lumber Company, *et al.*
vs.
The Northern Pacific Railway Company, *et al.*
} No. 1348.

ABSTRACT OF EVIDENCE.

Complainants' Exhibit 1 (P.-7) offered, being Northern Pacific Railway Company local and joint tariff, in connection with Butte, Anaconda and Pacific Railway, naming rates on lumber, shingles, and other articles enumerated from points in Oregon, Washington and Idaho, to stations in Washington, Idaho and Montana on the Northern Pacific Railway and the Butte, Anaconda & Pacific Railway.

Depositions offered in evidence (P-8) taken at Spokane, Washington, together with the exhibits.

Mr. Stephens, counsel for complainants, read into the record (pp. 10 and 11) statement furnished by the Forestry Department, showing the sales of lumber by the Fidelity Lumber Company, Spokane, Washington, on March 18, 1907, in the Priest River country, as follows:

"Dead and live white pine—$4 per M.
Dead and white western larch, $2 per M.
Dead and live red fir, $3 per M.
Dead and live red cedar, $2 per M.
Dead and green timber.
Red cedar—1½ cents per linear foot.
Poles, 12 inches and less, at small ends."

Mr. Stephens also offered a memorandum showing sales to the Chicago, Milwaukee & St. Paul Railroad Company under the rules of the National Forests:

"Lolo National Forest—$5 per thousand feet B. M. (I take it that is board measure) for all timber on right of way.

Coeur d'Alene—$4 per thousand feet B. M., for all timber on right of way and in sale to railroad on Clear Creek—$4—

$5—$6—per thousand feet B. M. for timber cut by contract from National Forest Lands outside of right of way.

Helena—$3 per thousand B. M., and $1 per cord for cord wood for timber from right of way."

Mr. Stephens also offered from the same source a list of prices which are being obtained by the Forest service for timber on a number of sales now in progress on the Coeur d'Alene, Priest River and Lolo National Forests:

BUNKER HILL & SULLIVAN MIN. & CONCEN. CO.—TIMBER SALE.

March 22, 1907.		Coeur d'Alene.
Live and dead	White Pine	$4 per M.
Live and dead	Douglas Fir	3 per M.
Live and dead	Hemlock	2 per M.
Live and dead	Tamarack	2 per M.
Live and dead	Red Cedar	2 per M.
Live and dead	White Fir	1.50 per M.

FEDERAL MINING & SMELTING CO.—TIMBER SALE.

July 27, 1907.		Coeur d'Alene.
Live	White Fir	$4 per M.
Live	Douglas Fir	3 per M.
Live	Red Cedar	3 per M.
Live	Hemlock	2 per M.
Live	Tamarack	2 per M.
Live	White Fir	1.50 per M.
Dead	All species	2 per M.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.—TIMBER SALE.

August 8, 1907.		Coeur d'Alene.
Live and dead	White Pine	$4 per M.
Live and dead	Douglas Fir	4 per M.

J. T. KNAPP.—TIMBER SALE.

September 16, 1907.		Lolo.
Live and dead	Douglas Fir	$3 per M.
Live and dead	Tamarack	3 per M.
Live and dead	Lodgepole Pine	3 per M.
Live and dead	Red Cedar	3 per M.
Live and dead	Balsam	3 per M.

MANN LUMBER CO.—TIMBER SALE.

April 22, 1907.		Lolo.
Live and dead	Douglas Fir	$3 per M.
Live and dead	Larch	3 per M.
Live and dead	Lodgepole Pine	3 per M.
Live and dead	Balsam	3 per M.
Live and dead	White Fir	3 per M.
Live and dead	Spruce	3 per M.
Live and dead	Red Cedar	3 per M.
Live and dead	White Pine	3 per M.

FIDELITY LUMBER CO.—TIMBER SALE.

March 18, 1907.		Priest River.
Live and dead	White Pine	$4 per M.
Live and dead	Douglas Fir	3 per M.
Live and dead	Tamarack	2 per M.
Live and dead	Red Cedar	2 per M.
Live and dead	Red Cedar Pole	

Timbers 12 inches and less at the small end, 0.01½ per lineal ft.

On the Coeur d'Alene National Forest the prices have been advanced to a flat rate of $4 per M for mixed species. When the species are selected the price may be even higher.

The prices in the Chicago, Milwaukee and St. Paul Railway Company's Timber Sale on the Coeur d'Alene National Forest have not as yet been approved, but they will, no doubt, remain as they are stated above.

Very truly yours,

WM. F. COX,
Assistant Forester."

Mr. Stephens next offered in evidence a copy of the records of the State of Idaho, relating to a sale of timber land in April, 1907, showing the stock for sale. This was marked Complainants' Exhibit No. 2.

Complainants' Exhibit No. 3 (P-27), offered in evidence, consisting of a statement of the rating of engines on the Northern Pacific Railroad:

"2-25-8.

Tacoma to Summit.
Cascade Mtns—1350 tons.
Easton to Pasco, train limit 60 loads—2400 tons.
Pasco to Spokane—1700 tons.
Spokane to Missoula—1600 tons.
Missoula to Helena—1700 tons.
Helena to Logan—2200 tons.

Logan to Livingston—1500 tons.
Livingston to Glendive—train limit.
Glendive to Mandan—1250 tons.
Mandan to Jamestown—1500 tons.
Jamestown to Fargo—1700 tons.
Fargo to Staples—2500 tons.
Staples to St. Paul—2200 tons.

Complainants then offered in evidence (P-29), Watrus Exhibits Nos. 1 to 13, being Great Northern time-tables, and offered in connection with depositions of the witness Watrus taken at St. Paul, showing rating of engines on Great Northern.

Complainants also offered in evidence (P-29) three single sheets marked Complainants' Exhibits 3 to 6, inclusive, the purpose being to show, in connection with the depositions, how the empty cars are kept, and other matters relating to the movement of empty and loaded cars testified to by the witness Watrus.

Complainants' Exhibit No. 7 (P-37) offered in evidence, being a statement showing coal rates, old and new.

Rates	OLD		NEW	
	Double	Single	Double	Single
Denver, Colo	.45	.40	.55	.50
Colorado Springs, Colo	.45	.40	.55	.50
Pueblo, Colo	.45	.40	.55	.50
Salt Lake City, Utah	.40	.40	.50	.45
Ogden, Utah	.40	.40	.50	.45
Milford, Utah	.48½	.47½	.62½	.57½
Provo, Utah	.40	.40	.52½	.47½
Minnesota Transfer, Minn	.45	.45	.55	.50
Omaha, Neb	.55	.50	.60	.55
Kansas City, Mo	.55	.50	.60	.55
East St. Louis, Ill	.57½	.52½	.65	.60
Crawford, Neb	.45	.40	.55	.50
Austin, Texas	.70	.70	.82½	.77½
Galveston, Texas	.70	.70	.82½	.77½

Complainants' Exhibit No. 8 (P-39), offered in evidence, as follows:

COMPLAINANTS' EXHIBIT NO. 8.

Great Northern Railway Company
Freight Traffic Department.
St. Paul, Minn. Feb. 25, 08.

Mr. J. B. Kerr,
c/o Northern Pacific Ry. Legal Dept.,
St. Paul, Minn.

Dear Sir:

Please refer to File S—

Referring to Mr. Stevens' inquiry as to old and present rates on lumber applying from O. R. & N. points to points on the Great Northern via Spokane.

The following gives the old and new rates:

Prior to November 1st, 1907.

Supplement No. 2 SR 662, effective January 10th, 1906, page 21 names rates from Harrison and Wallace, Ida. and intermediate points to Minneapolis, Minnesota Transfer, St. Paul, Duluth and Superior as follows:

45 cents on poles, double car lengths
50 cents on pine lumber, double car lengths, and
40 cents on single car lengths of pine lumber only.

OR&N tariff 1906, OR&N ICC 1101, GN GFO 17310, effective October 17th, 1906, names 40 cent rate on fir lumber, poles, piling and timbers, single car lengths from points between Portland and the Dalles, Ore., to St. Paul, Minneapolis, Minnesota Transfer, Duluth and Superior.

Same tariff also names rate on pine lumber, poles, piling and timbers, single car lengths from the Dalles and points between the Dalles and Spokane to same Eastern Terminals, 40 cents.

Effective November 1st, 1907.

Under SR 936, effective November 1st, 1907, 50 cent fir lumber rate applies from Coast points on the OR&N to St. Paul, Minneapolis, Minnesota Transfer, Superior and Duluth only.

Same application and tariff names current Spokane rates to group B C & D to practically all points in Minnesota, including the terminals.

Divisions.

Divisions of the rates above mentioned both prior to November 1st, 1907, and at present is on a mileage pro-rate, with minimum of 25 per cent. to the short line with the following deductions before pro-rating:

On shipments from Portland, Albina and St. John when consigned to Great Northern Eastern Terminals 10 cents is deducted as terminal charges, divided equally before pro-rating between the O R & N and Great Northern Rys.

On shipments from Portland, Albina and St. John to stations in Minnesota other than Eastern Terminals the western terminal charge of 5 cents only is deducted before pro-rating, which accrues to the O R & N Co.

On shipments from interior points on the O R & N to Great Northern Eastern Terminals, eastern terminal charge of 5 cents is deducted before pro-rating, which accrues to the Great Northern Ry.

I trust this will give you the information desired.

Yours truly,

Complainants Exhibit 8½ (P145) offered in evidence, consisting of statement furnished by the Northern Pacific, with reference to various forest products shipped from points on the Northern Pacific to the summit of the Cascade Mountains and Lothrop and Arlee, Montana, for the calendar years 1905, 1906 and 1907.

Complainants' Exhibit No. 9 (P-51) offered in evidence, as follows:

"Great Northern Railway Company.
Accounting Department
St. Paul, Minn., February 18th, 1908.

J. G. Drew,
Comptroller
G. R. Martin,
Assistant Comptroller.
Mr. James B. Kerr,
City.
Dear Sir:—

Replying to your letter of even date to Mr. R. I. Farrington, Second Vice President, requesting certain information in connection with the freight traffic of the Great Northern Railway Company to be used in connection with the Potlatch

Lumber Company case. I beg to advise as follows, covering the fiscal year ended June 30th, 1907.

	Tons	Ton Miles	Revenue
Eastbound	13,351,738	3,322,924,004	$20,971,124.93
Westbound	4,874,268	1,601,666,276	16,351,599.36
Total	18,226,006	4,924,590,280	37,322,724.29
Interstate	14,164,344	4,426,476,985	$30,600,677.39

	Ave. Revenue Per ton mile. Cents.
Eastbound	.631
Westbound	1.021
Total	.758
Interstate	.691

Yours truly,

J. G. DREW,
Comptroller."

Complainant's Exhibit 10 (P-53) offered in evidence, as follows:

"Northern Pacific Railway Company.

Statement showing tons one mile, revenue and rate per ton per mile on all interstate freight carried—fiscal years ending June 30, 1906 & 1907.

	Ton miles	Revenue	Rate per ton per mile
1906.			
East	2,972,848,557	$17,828,091.63	0.5997
West	1,359,950,617	13,997,314.58	1.0292
Total	4,332,799,174	$31,825,406.21	0.7345
1907			
East	2,732,433,790	$17,026,059.77	0.6231
West	1,775,736,746	17,900,001.66	1.0080
Total	4,508,170,536	$34,926,061.43	0.7747

Complainants' Exhibit No. 11 (P-54) offered in evidence, being statement of empty car movement by months.

JOHN J. HERLIHY, a witness for the complainants (p. 55), testified:

I live in Spokane, Washington, at the present time. In one way and another I have been in the lumber business for about twelve years. During two and a half years I have worked in fir timber saw mills, manufacturing fir lumber. For three and a half years I was in the employ of the Kalispell Lumber Company, at Kalispell, Montana. For three years I was in the employ of the Potlatch Lumber Company, as manager of the mill, and for a year and a half I was engaged in the wholesale lumber business at Spokane. I am now engaged as a special salesman for the Potlatch Lumber Company. For the past two months I have been traveling over the territory which, in common parlance, is termed "Territory east of Chicago"; in other words, through part of Illinois, northern Indiana and northern Ohio; the Southern Peninsula of Michigan, New York State and Pennsylvania. I was trying to sell lumber for the Potlatch Lumber Company. My sales during that time in that territory were very small, in fact, so small they are hardly worth mentioning. The products sold were white pine of the higher class, used for special manufacturing, where other woods could not be used at that time; in quantity, about 125,000 feet altogether, about six carloads.

I am fairly familiar with all of the market conditions of common stock in the places where I have been. During January I was in Chicago up to about the 9th of the month, and during that time the sales of Southern pine had been made on a basis ranging from $14 to $16 per thousand feet, delivered at Chicago. It was Southern pine, which is termed dimension stuff; that is, 2 x 4's to 2 x 8's, and some 2 x 10's, and Southern pine inch boards, up to ten inches in width. At the other places where I have been, the prices range about the same in proportion to the additional freight. At Toledo, Ohio, sales were made on the basis of $15 to $15.50 per thousand for the same lumber. At Detroit, Michigan, sales were made at $15.50 to $16. Taking the manufactured lumber in the Spokane territory and taking the freight out of that price, the railroad would get all the amount of the invoice.

The general character of timber in the State of Washington upon the summit of the Cascade Mountains to the west is classified as Douglas fir, spruce and cedar, which is of large growth and a higher quality than the timber in what is known as the

Spokane District. It is a considerably higher quality and larger growth than the timber on the east summit of the Cascade Mountains. We are not able to manufacture the same products, because the size of the timber, in the first place, precludes us. Then we have a very thick sap, and that is a fault, on general inspection by the railroad themselves. Our timber has not got the strength that the Coast timber has, the fir especially. We cannot manufacture large construction timber, like you can from the Coast lumber. I have seen large construction timbers from the Coast, in the last few months, at Chicago, Toledo, Cleveland, Detroit, Buffalo, New York City and various other points. That timber would range in size from 12 x 12 up to 32 feet; 12 x 14 and 14 x 16 up to 24 feet; joists 2 x 14 and 2 x 16, 24 and 26 feet long. Also a good deal of car sills, in other words stock 5 x 9 x 41 feet, and some 7 x 11 and 41 feet. Generally speaking, there is none of that dimension stuff manufactured in the Spokane Territory. There has been a little manufactured on special orders, to be used locally within the district. As I previously stated, the stock shipped out of the State was shipped to points where this other timber is used, would not pass inspection as laid down by the bureaus passing on it. There is very little timber from the foot of the Cascade Mountains to the Columbia River, and from the south part of the State off to the north part of the state. If we use the Great Northern as a base, north of the Great Northern Railway there is timber, and east of the Columbia River. Through the rest of the State of Washington, there is practically none to speak of. There is a considerable territory north of the Great Northern, in the bend of the Columbia, where there is no timber, and in referring to that I would say that it is a small territory, practically east of the Columbia River. The agricultural part of Washington then is between the foot of the Cascade Mountains and the eastern part of the State of Washington, and largely south of what is known as the Big Bend in the Columbia River. The wooded country of Washington is in the southern part of the State, including the counties of Whitman, Garfield, Walla Walla, south to the Oregon State line. The timber where it begins in the northeast part of Washington, and to Idaho and into Montana is practically the same all through that section. There is no difference as to quality, and practically the variety of the timbers is distributed on about the same proportions. I have visited eastern Oregon at various times. In the eastern Oregon district they have a greater percentage of pine than we have, but not so much mixed

timber. In our section, I should say that we have eight varieties of timber that we manufacture. In the eastern Oregon district three would about cover it, with yellow pine in large quantities, say probably eighty to eighty-five per cent. of the standing timber. By yellow pine I mean what is classed as western soft pine in Oregon. In Idaho and northeastern Washington the same class of timber to about 70 per cent., about ten per cent. of white pine, 20 per cent. larch, and the other 20 per cent. is mixed timbers, in small proportions, hemlock, spruce, cedar, white fir and all the other low-grade timbers. In fact the output of the log, as we would say, is practically all common grade lumber, suitable for what is termed small piece stuff, two inches thick by four inches wide and wider, we being able occasionally to saw on special orders, for retail yards, pieces up to six by six and six by eight. Our standard lengths run from 12 to 20 feet. We do not attempt to make anything over 20 feet long. There is a small proportion of 18 to 20 feet stuff, but 12 and 16 are the standard lengths.

Our select and better would compare with the Coast first and second clears. Probably we would be on an average a little lower than Coast second clear. Practically all the flooring used in the Spokane district comes from the Sound. A small percentage of the interior finish for houses and business blocks and other places comes from the coast. It is termed long and deep joists, practically comes from the coast, all heavy construction timbers. I have prepared a map showing certain data, a blue print, which is hanging there (indicating). This map was gotten up to show the different districts, in the first place, to which the new rate under I. C. C. 850 applies. Take the Northern Pacific Railroad as a starter, and what is listed as the Spokane rate includes all the territory along the Spokane and Lewiston branch of the Northern Pacific down to and including Kamish, Idaho, one hundred and fifty-eight miles south of Spokane, and from Spokane to Culdesac, Idaho, 147 miles from Spokane.

The rate extends east over the Northern Pacific to and including Evard, 240 miles east of Spokane. On the Northern Pacific and on the Great Northern the rates extend east from Spokane to Ferrykatka, 120 miles east of Spokane. The Spokane Falls Northern, which is now a part of the Great Northern, has an arbitrary on the Spokane rate ranging from one cent to two and a half cents to the hundred pounds. The output of lumber in this part of the country, along the Spokane and Lewiston Branch only, is about 125,000,000 feet. Out of

that 60 per cent. is manufactured within a zone 70 miles south of Spokane. The output of lumber east of Spokane on the Northern Pacific, is about 330,000,000 feet per annum. The output along the Great Northern, from Spokane east to Ferrykatka is 170,000,000 feet. Using Spokane as a basis for distance, it would really make a greater average haul.

Previous to the new rate going into effect, this territory in North Dakota was divided on a graduated scale. Between Beech, North Dakota, and Fargo, North Dakota, the rate ranged from 33 cents, and gradually increasing along to Mandan to 36 cents and along to Fargo where it reached 40 cents. Under the new tariff these same rates have been advanced to 40 cents, including the territory from Beach to Mandan and from Bismarck to Jamestown 42 cents, and east of Jamestown, to and including Minneapolis, St. Paul and Duluth, 45 cents. I am taking the rate from Spokane, I have been using Spokane as the basis. To answer your question, the rate is not 40 cents from Sand Point to Beach; but the proportionate increase is just the same. I cannot recall now what it is without referring to the tariffs; but the proportionate increase in just the same.

Using the term "our timber" I mean to apply it generally to the materials in the Inland Empire, taking the product of the country all through that section. The lumber is of such a grade as that we can not compete in the territory east of the Missouri River, and practically south of the lines of the Chicago, Burlington & Quincy Railroad in Nebraska, including also Wyoming, Colorado and Utah. The main competition is with the southern yellow pine in eastern Texas and western Louisiana. At the present time the mills of the Inland Empire are not able to compete with the product of the south.

On that map I have indicated the old and new rates to points in South Dakota. The distance from Spokane to Linton, North Dakota, is 1130 miles. The old rate was 40 cents and the new rate is 45 cents. By the Northern Pacific to Minneapolis the distance is 1501 miles from Spokane. The old rate was 40 cents and the new rate is 45 cents, so that at Linton you get 45 cents for 1130 miles as against 1501 miles at the same rate. By the Great Northern to Minneapolis the distance is 1485 miles; by the Spokane International, Canadian Pacific and Soo lines, the distance is 1468 miles. The same rate applies on that road. At Linton the Northern Pacific connects with the Chicago, Milwaukee & St. Paul. It is the junction. Zeeland, North Dakota, which is the next point I have mentioned, is 1115 miles from Spokane. The old rate under the previous tariff

was 41½ cents—that is, previous to the tariff going into effect November 1st. That was 1½ cents higher than Linton. The new rate is 51½ cents, or 7½ cents more. Where, before, there was a difference of 1½ cents, there is now a difference of 7½ cents. Going along the line of the Milwaukee from Linton I take Eureka, South Dakota. From Spokane it is distant 1170 miles. The old rate to Eureka was 45 cents, and the new rate is 55 cents. That is 10 cents difference; in other words, for 1170 miles the rate is 10 cents more than it is to Minneapolis, for 1501 miles. There is more than 300 miles difference in distance, and the rate is 10 cents greater. The rates are over different roads. The character of the country from Linton to the east is practically the same grade all along the Northern Pacific, through North Dakota. It is a prairie country. There are no heavy grades. Roscoe, North Dakota, is 1205 miles, and the Spokane rate is 48¾ cents under the old tariff and 58¾ cents under the new tariff. That is illustrative, I believe, of a number of the points all through, under the same conditions that are indicated by figures here on the map, and also the distances. I have figured out the distances from the official guide book. They are reasonably accurate. The difference in distance via Linton and via Edgeley is about 70 miles in favor of Linton. Down to and including practically Yankton, South Dakota, the distance is less than it is to Minneapolis, from Spokane, with a rate varying from 5 to 12 cents higher. The same will apply to points on the Chicago Northwestern, connecting with the Northern Pacific at Oaks, North Dakota. The distances there vary from 300 miles down to practically equal distances, and the rate from Spokane to Minneapolis being from 5 to 12 cents a hundred higher.

The distance from Spokane to Omaha is 1510 miles, and to Minneapolis, via the Northern Pacific is 1501 miles. The rate to Omaha under the new tariff is 50 cents. The Great Northern publishes a rate via Sioux City for a distance from Kalispell to Omaha of 1596 miles, of 43 cents. That is the new tariff. It would be over the C., B. & Q. and the Great Northern. I think the road is operated by the C., B. & Q., but I am not positive of that fact now. It comes from Sioux City by way of Western Nebraska and Omaha. Under the new tariff there is a differential applying to Ellensberg of 2½ cents a hundred pounds, also applying on Great Northern points, east of the Cascades and west of Spokane. The difference in differential between the Coast and what is known as the Spokane rate is 5 cents a hundred. That applies to points east of the Cascade

Mountains and to one or two small points on the Great Northern. From LaGrande to Omaha on the Union Pacific is 1494 miles, with rate of 43 cents. That is a 7-cent difference between that and the Spokane rate of 50 cents, which is charged for 1510 miles, a distance of 16 miles more; 7 cents greater rate from the Spokane territory compared with the rate from LaGrande. The distance between Portland and LaGrande is 305 miles.

The principal table shows the distances from points on the Kansas City Southern in Louisiana and Texas to Omaha, Sioux City, Minneapolis, and points on the Atchison, Topeka & Santa Fe, and points in eastern Texas and western Louisiana, to and including Omaha, Sioux City and Minneapolis. The distance from Beaumont to Omaha is 981 miles, and the rate charged by the Kansas City Southern and the Atchison, Topeka & Santa Fe is 23 cents to Omaha. This shows that, for the same distance, Spokane has a rate of 40 cents. From Lake Charles, Louisiana to Omaha the distance is 947 miles, with a rate of 23 cents. From Spokane, about the same distance, the rate is 40 cents. From Bon Ami to Omaha is 897 miles, and that has a 23 cent rate, while Spokane pays 40 cents. That applies on down the line until we come to Shreveport, which is 765 miles from Omaha, and has a rate of 23 cents, while Spokane pays 37 cents. Alexandria, Louisiana, is 1040 miles from Omaha, and pays a rate of 23 cents, while Spokane pays 40 cents. Texarkana is 695 miles from Omaha, with rate of 23 cents, while Spokane, being about the same distance, pays 36 cents. From Beaumont to Sioux City is 1072 miles, with a rate of 28 cents, while Spokane pays from 42 to 45 cents for the same distance.

As against 28 cents to Sioux City. Lake Charles, Louisiana, is 1048 miles from Sioux City, and pays a rate of 28 cents as compared with a charge of 40—45 cents for the same distance from Spokane. We will take the shortest distance, Texarkana to Sioux City, a distance of 728 miles, with a rate of 28 cents, while Spokane pays 37 cents.

The same is true of the distances at Minneapolis, and the same ratio holds. We will take one or two points for illustration. Texarkana, by the Kansas City Southern is 1071 miles from Minneapolis, with a rate of 32 cents, while for the same distance from Spokane the rate is 42—45—50 cents. The 42 cent rate applied by the Great Northern, the Northern Pacific, or the Spokane International, the Canadian Pacific and the Soo Line. The 45 cent rate applies for that distance to points reached over the Great Northern to Billings, and then

over the C., B. & Q. The 50 cent rate applies to points in South Dakota, via the Northern Pacific to Linton, and then over the Chicago, Milwaukee & St. Paul. Most of the Southern pine lumber that is sold in competition with the product of the Spokane District in Nebraska and South Dakota, up to and including Minneapolis and as far south as Duluth, originates at points on the Kansas City Southern, and the Atchison, Topeka & Santa Fe.

I have taken also the distances by the Santa Fe, and they range from 1166 miles from Silsbee to Omaha, to 1237 miles from DeRider to Omaha, with a rate of 23 cents. This shows that for the same distance Spokane pays from 42 to 55 cents from Sillsbee to Omaha. The lower rate of 42 cents is along the Great Northern and Northern Pacific to points in North Dakota. The next lowest rate of 45 cents is west of Jamestown, along the main line of the Great Northern, and Northern Pacific to points in North Dakota.

The 50 cent rate is to points on the Burlington, and the 55 cent rate to points on the Chicago, Milwaukee & St. Paul and the Northwestern.

The timber in Louisiana and New Mexico is the same as our western soft pine. It is the same kind of timber. From Flagstaff, Arizona, by the Atchison, Topeka & Santa Fe, is 1740 miles, and it pays a rate of 40 cents; from Williams, Louisiana, by the Atchison, Topeka and Santa Fe, the distance is 1374 miles and pays a rate of 32 cents. The amount of lumber manufactured in Arizona and New Mexico is about 2,000,000 feet annually. The Spokane rate for that same distance would be 55 cents for 1753 miles as against 40 cents for 1740 miles—55 cents as against 40 cents, and 32 cents as against 45 cents. I have prepared tables here showing comparisons from various southern points. The tables herein show the distances and rates to points in Nebraska, from points on the Atchison, Topeka & Santa Fe, and points on the Kansas City Southern, and points on the Missouri Pacific line, giving the distances, and the long haul and short haul. It also shows the rate of freight, the distances from Spokane, and its rate of freight. I would say that in the Spokane case I have taken the lowest minimum that will be allowed, according to the cubical load capacity of the tariffs. Of course, in exceptional cases, that weight would be under that. These distances were taken from the official guides issued by the railroads. In speaking of the greater amount of lumber shipped from the Spokane district as being shipped within a radius of 70 miles from Spokane, I have taken

that from the actual capacity of the shipments from the mills, in that distance. This minimum carload from Spokane is practically taken from thhe tariff, and taking the basis of a 34-foot car, loaded to full visible load capacity, it would give about that minimum. I got that information practically from the tariffs, from the cubic foot contents.

If they lead to the capacity of the car, the net weight then governs. If they load under it, they have to pay for the minimum, unless they have a specific provision in regard to that on the bill of lading, they have got to pay for the full minimum. They have that privilege specifically mentioned in their tariffs, with the exception that when a car is loaded to its full visible load capacity they specify on the bill of lading that the net weight will govern, otherwise that they have got to pay the full minimum capacity, as provided by the rules of the railroad. I got this minimum for southern pine shipments from the testimony of Mr. Keith, in December, before the Commission in the Pacific Coast and Oregon Lumbermen's case. He appeared as a witness for the railroad companies. I do not know anything about 54,000 pounds being the average load of southern pine. That 34,000 minimum gives these people an advantage on large lumber shipments inland. If a man wants 15,000 feet of lumber it will weigh 34,000 pounds, and the southern pine mills can ship it. If a man wants 15,000 feet of lumber from the Spokane District, you cannot sell it; but you have got to sell enough to make the minimum, as provided by the railroad rules. I would say that I have not had experience enough to say whether 34,000 pounds is about the average of southern pine shipments of lumber.

Complainants' Exhibit No. 12, offered in evidence (p. 83), being statement of comparative distances and rates from points in Southern Pine Belt and from Spokane to points in Nebraska as shown herein, comprising pages 84 to 102, inclusive, copied into the record.

The greater portion of the southern pine shipments originate south of Shreveport. The main operations include the mills along here (indicating), at DeRider, Bon Ami, Alexandria, Lockport, Lake Charles, Pickering and Fisher. I would say those embrace all the principal points in Louisiana. I did say that I had no experience in southern pine shipments, but we have the records of the Association there, and have the records of the mills in that district. The owners of the mills know the capacity of the mills. I have prepared the tables to show, on the first page, the distances from the originating point to Alli-

ance, Nebraska, by the Atchison, Topeka & Santa Fe Railroad, the Kansas City Southern and Missouri Pacific, from points at which the mills are located, which are actually selling in that district. I have averaged those distances and shown the rate for the average distance, also the Spokane rate and the distances. I have done that as to other points, to Broken Bow, Nebraska; Seneca, Nebraska; Grand Island, Omaha, Sioux City, Iowa, and Minneapolis. The last page shows the distances from the mills, on the Kansas City Southern Railway, and the movement by the Kansas City Southern to Kansas City, and thence to Chicago by the Santa Fe, which is the shortest distance, showing distances ranging from 1092 miles, to 1219 miles, with a rate of 26 cents. The rate from Spokane, for the same distance by the Northern Pacific, is from 40 to 45 cents, by the Great Northern the same, and by the Chicago, Burlington & Quincy from 45 to 47 cents.

I would say that the rate on the products of Spokane, and the district taking the Spokane rate, from Chicago to Toledo was 9 cents, and the rate on Southern pine from Chicago to Toledo is 4 cents. In other words, the rate from the Southern pine mills to Toledo is 30 cents, and from Spokane, under the new tariff, it would be 34 cents, and under the old tariff it was 59 cents. The distance is the same, being 240 miles from Chicago to Toledo. The rate from Chicago to Toledo is to be covered by supplement No. 2-D, Transcontinental freight tariff, as published in December.

The rate on southern pine into Toledo is shown by the Atchison, Topeka & Santa Fe Tariff via Chicago. It is not based on the rate by way of Cincinnati. I took that from the lumbermen's tariff book.

Of the product which we sell in the market from the territory around Spokane, the percentage of common grades is, practically speaking, 92 or 93 per cent.; 7 per cent. of clears; what we call selects, or better. Our C. select and better compare with first and second clears of southern pine or coast fir. Other 93 per cent. is all common grade. By common grade we mean knotted and defective boards, that will not be classed or passed in the grade of clear and better; in other words, boards with a knotty appearance, and running from that down to boards full of pitch and knot holes, and such other defects as are in our common classes. None of it can be used for finishing.

The southern pine is being sold in Nebraska territory at $16. That is, I would say, in the Nebraska territory, and the terri-

tory in the vicinity of Grand Island, Nebraska. At Omaha, at about $14.50, and at Minneapolis at $16. Under the new tariff the value would range from $5 to $6.50 at the mill per thousand feet. At present prices lumber could not be manufactured in the Spokane district other than at a loss, not within the price of $7 per thousand feet, with the present competition. There is a considerable amount of stock on hand in that territory. In the Spokane district at the present time there are about 570,000,000 feet of lumber at the mills.

That seven per cent. which I testified as being the best grade, of course, if it was to come to the point of segregation of all timbers would not apply. It would be a hard thing to get one per cent. of selects. With our red fir we would get probably one per cent. at the outside, and with our white fir nothing; it would practically all be common, and hemlock would be the same thing. In our heaviest percentage of fifty per cent. of yellow pine, it would run about seven per cent. select. Our yellow pine and the yellow pine of Texas and Louisiana is not of the same nature at all. Our yellow pine is classified by the Forestry Bureau as comparing probably with the Norway pine of the north, rather than with the southern pine of the south. We have the pitch defects, which the southern pine has, and we have heavier saps than the southern pine, that is outside of the timber in the State of Missouri. Missouri pine probably has sap that would compare with ours. The knots in our lumber are not as sound as the southern pine knots. I would say that sixty per cent. of our yellow pine, if left for the space of nine months to a year—the knots would begin to drop out. There are more black knots. They are not the red, sound knots.

(P. 112.) The Forestry circular number 122, referred to as being exhibit already in evidence in the Coast cases, and considered an exhibit in this case.

Cross-Examination.

I am with the Potlatch Lumber Company. There are quite a number of owners of that company. I am not an officer of it. Have been with it at the present time about four months. Neither Mr. Humbrid or Mr. Weyerhaeuser are interested in it. The mill is located at Potlatch, Idaho, 79 miles from Spokane, eleven miles east of Palouse City.

I can not tell how many feet that mill cut in 1907 and 1908. I have no idea, I have not been around the mill enough to know.

I know from the sales where seventy per cent. of the total cut in that district goes. I did not say that 70 per cent. of the lumber cut in the Spokane district was out south of Spokane. I said it was cut within a radius of 70 miles of Spokane. I got these figures from the secretary of the Oregon & Western Shippers' Association. R. A. Kellogg is the secretary. I don't know much about the cut in 1906 and 1907.

I said that at first I was with them for three years, then for a year and a half I was in the wholesale business at Spokane. I have been with them since December 1, 1906. They cut about 70,000,000 feet that year. Of that 6 per cent. was white pine, about 40 per cent. western pine; the rest was mixed, fir, larch, white pine, spruce, cedar, hemlock and such stuff, a general mixture.

The first trip I made east at the present time as salesman for this company was in December. I went to New York and Pennsylvania. I did not sell all of the six cars in New York and Pennsylvania, I sold part of it in Illinois and part of it in Ohio. The last previous trip through that same territory I did not make in the interests of the Potlatch Company. I never made any other trip in the interest of that company east of Chicago.

We have undertaken to sell a similar product in that same territory by mail, but not otherwise. I have traveled through that territory in November and December, 1906, to sell the same kind of product. I sold then about 24 or 26 cars, but of an altogether different nature of stock. There was one big lump sale to one party.

In testifying that I only sold six cars, I do not mean to say that there was no market there at the present time under the new rates in all cases, but the general fact of the matter was that, in particular instances, we were not able to compete in price with other sections of the country. I don't think you can say that the market has gone to pieces when people are buying, and sales being made all the time.

There has been a fall in the sale price of southern pine in this territory which I covered, in the last six months, of about five to seven dollars. Inland Empire pine, taking the territory handling the same grade of stuff, has been sold, in particular instances, at seven dollars less, and even worse in some cases. The freight was such that it would not pay to have sold more than six cars. I could have sold more if I had wanted to give the railroads the freight.

I understand the Potlatch Lumber Company is an intervenor before Judge Hanford.

I have no instructions regarding the basis on which I was to sell, whether under the old rate or the new rate. I made the price on our product.

This territory back here (New York and Pennsylvania) is not affected by the tariff going into effect November 1st. We have a through rate from here, and the tariff is 70 cents, governed by supplemental tariff 12-2d. That rate went into effect some time in December, as I remember.

I stopped off on the way to New York and Pennsylvania to try to sell around Chicago. I could not sell a carload in Chicago, although I tried. I made a delivered price. I tried to sell my lumber in competition with the Minneapolis market in the same territory that Minneapolis sells, irrespective of what the freight rate would be from our district. I tried to sell our lumber at the prices made by the Minneapolis dealers in the Chicago market. I undertook in Chicago to sell our product on the basis of the prices made by Minneapolis dealers in Inland Empire pine, irrespective of what the freight rate would have been, and I was not able to sell any. Minneapolis has one rate into Chicago. I will correct myself as far as the Minneapolis dealer is concerned, and say the price of the lumber manufactured in Minneapolis and adjacent to Minneapolis. In Chicago I was competing with both the Inland Empire pine and with Minneapolis pine, from Minnesota and Wisconsin. I don't know whether a great many of the western lumber men have been selling pine on the basis of the old rate since the injunction. I don't know what basis they are using for their prices at all. I don't know of any official price lists of the Association.

It is true and not true that the reason I could not sell any in Chicago, Pennsylvania and New York was because of the general market conditions. The fact is that the southern pine mills, with the advantage of rate they had in that territory, were able to sell and did make sales, and numbers of sales. The fact that Minneapolis was shipping lumber would lead anyone to suppose that there was a market for stock, and they cut my price. I could have sold lumber if I could have come anywhere near the price, but if we had done it, we would naturally have had to pay the railroad from a dollar to two dollars more than the invoice price, on account of freight in some cases.

This market is not affected by the rate; that is the territory east of Pittsburg and Buffalo is not affected by the rate. The point of my testimony that I could only sell six carloads

in the territory east of Pittsburg on this trip, is from the very fact that it is because of the rates, in the first; and in the second place, southern pine has a low rate to a good many points near to it, and they can equalize their prices. The trouble is with us that we cannot equalize the prices.

The Potlatch Lumber Company cuts and ships western pine and white pine. We cut a whole lot of 2 by 4. We have got a big stock of it. I didn't say we cut seventy million feet last year, I say that is about the capacity of the plant. I won't say positively the exact quantities that the mill cut, because I have not seen the reports. I have not spent a week at the plant. When I was previously with them I knew the kind of stock they cut, and it is practically the same now. I was with them before this in 1903, 1904 and 1905. At that time the number of 2 by 4's they were cutting would vary, according to the logs they were cutting. There is no set amount that we would cut. We cannot figure and give it correct, or anywhere near correct, in percentages. I have no idea of what percentage of the total output of our mill for one year would be, of dimension stuff. The only way the percentages of other kinds cut could be verified and be given anywhere near accurately would be to go back to the books, invoices, sales books and such things as that. There is no set rule about cutting a percentage of different kinds of lumber.

The best market for the Potlatch Lumber Company, and where it sells most of its product in interstate traffic is points in North Dakota, South Dakota and Nebraska. We sold wsetern pine and a little white pine, and such products as that, in Nebraska. I cannot state how far east of Nebraska we went. We have very little in Omaha. You can practically say that the territory in which most of the product was sold would be west of Seneca, Nebraska, or Broken Bow, Nebraska. This was mixed stuff, part select and part common.

Under the conditions that existed in the year 1907, I would say that Mr. Kellogg's testimony at Spokane that in that year there was 107,000,000 feet of pine went into Nebraska, would be correct, and the reason for that was that, at that time the mills of the south were busily engaged in cutting railroad material and heavy construction material for railroad companies, and they were not making any effort to do any retail business in the Nebraska territory. About June, when the business of the railroads fell off, the mills of the south found that they had quite a stock on hand, and they then made an effort to sell, and did sell lots of stuff. At that time the

trade of the Spokane district fell off very materially, and I don't think that today the Spokane district is shipping more than one-third the amount of stuff they shipped into Nebraska in February of last year. 1906 and the early part of 1907 were abnormal years. I think Mr. Kellogg's testimony is about right, that in 1906, 111,000,000 feet went into Nebraska from this territory. Probably 80 per cent. of that was common lumber.

I would not say that the common lumber from the Coast has never been able to get into Nebraska. If I heard a well-informed lumber man from the Coast testify to that, I would think it would be true, as far as his case was concerned.

The conditions are what made our shipments into Nebraska in 1906 and 1907 possible. I said it was the abnormal demands by the railroad companies for car material, bridge material, and other big material, and that business went south. We didn't get any of that, except what might have been used for local purposes. The Coast was in the same condition. They were busy manufacturing stuff for the railroads, and it left the retail yard men in Nebraska and elsewhere out of stock. They had to send somewhere else to get their stuff, and consequently they came to us. Under normal conditions, we would not enjoy that trade. The Coast was in the same condition as the south. They were getting out railroad material. They don't all on the coast get out this big timber, but they get out car material and such stuff as that. They had a big trade besides in San Francisco, and they were able to get more money for their common product in San Francisco, owing to the demand there. I could not say what the average price paid for common boards was at our mills in 1906 and 1907. The market price on the line of the Northern Pacific f. o. b. at these points for common boards in 1906 and 1907 ranged from ten dollars up. In some cases it was lower and in some cases higher than it was on the coast. We probably got more for 12-inch boards than the Coast did, and we made more on them,—a whole lot more, that is we manufactured more in proportion to our cut. We got a larger amount per 1,000 for such boards in some cases in 1906 and 1907.

In those years I should say for a while that dimension stuff was worth a little more in Spokane territory than on the Coast. As a matter of fact our price on all dimension and common lumber was not uniformly higher than the coast now, during 1906 and 1907. The price list as published might be

higher; that is not a gauge of the market. We sell in competition with fir. I am familiar with their price list as published or printed. There was not such a great difference between Coast prices charged on fir and the Inland Empire price on western pine, for the same article. The abnormal part of those years was caused by demands of the railroads for material.

I did not say anything about the price of railroad material being the same. The price of common lumber and fir and western pine for 1906 and 1907 was practically the same. The reason anyone would want to buy our material in preference to the Coast material was simply because they could not get it from other districts. They make common lumber when they manufacture these big timbers, but the manufacturers were not able to ship it because they could not get the cars in 1907, not enough to supply the demand. When they got cars they used them for railroad material. We had trouble in getting cars because they were used for railroad material.

The normal market for our product is North and South Dakota, Nebraska and Colorado. I cannot answer now whether we sold more or less than usual in North Dakota, in 1906 and 1907. That was an abnormal year in North Dakota for a while. There was a good demand in the fore part of the year. More lumber was sold in the years 1906 and 1907 in North Dakota than in South Dakota. In South Dakota in those years I think the same rule would apply. I think the sales were about equal to what they have been in previous years. I think that our trade increased but a little bit up to June, practically. I presume that the same thing would apply to our trade throughout that country in North and South Dakota and Nebraska. All shipments from the Inland Empire began falling off in June. Very few orders came in, and at the same time shipments from the south increased into the same territory.

I never shipped any to California from the Inland Empire. Some box shooks have been shipped there. That is about all. If Mr. Kellogg said that in 1907 4,500,000 feet were shipped, that was abnormal at that time. That is an abnormal demand caused by the heavy fruit crop in California at the time and they had to come to us to get a few boxes. I think that I said over one-half of the lumber from Spokane and Lewiston branch was produced within seventy miles of Spokane. The Spokane and Lewiston branch is 178 miles and 146 miles. Be-

tween eight and nine hundred million feet of lumber was produced in 1907 in the territory referred to as affected by the Spokane rate. The report shows that over 40 per cent. of our lumber was consumed locally in the territory affected by the application for this differential. It would not be over 175 or 200 million feet. That would be a high estimate.

We produce very long timbers in our territory, only on special written orders. For heavy timber, as I stated, our timber is not of a nature to pass inspection under the railroad rules. Our western yellow pine is not as strong as southern yellow pine. The Government test shows that.

The route from LaGrange to Omaha, which takes 43 cents, is the O. R. & N. and Union Pacific. I made some computations from the map here, on rates from points in Texas, from Beaumont to Omaha. I did not select Beaumont alone. The Statement, as presented, will show these representative points, a short haul, long haul and intermediate haul, all the way through, and the average of them. Texarkana has a 23 cent rate to Omaha. It takes the same rate to Omaha that Beaumont does. I have heard that Texarkana, as a lumbering manufacturing point does not produce as great an output as is produced right in the vicinity of Beaumont.

A great deal of the lumber manufactured there is exported, but I don't think the reports will show that a majority of it is exported. That is an advantage to them we have not got. This territory between Pine Bluff and Texarkana is a lumber producing territory. That takes the same 23 cent rate to Omaha with Texarkana and Beaumont.

Cross-Examination. (Record, p. 137.)

Our lumber in the Spokane district is poorer in quality than the lumber produced on the Coast, very much poorer, as regards the ability of the mills to get out a product that would be able to compete in the market against other timbers. I should say very substantially poorer. Our common lumber is poorer than their common lumber. Our common boards on the average are poorer than their common boards. That is true of all the material I am connected with and the products I am selling.

I think the lumber from around Bonner, Montana, is a little better. It is a little bit better about Baker City and LaGrande, not to a very great extent. They do not have the mixture of timber that we have.

I am well satisfied that our lumber is very much poorer than that west of the Cascade Mountains.

People say that Mr. Frederick Weyerhaeuser owns much timber west of the Cascade Mountains. We read about him in the magazines being even richer than Rockefeller. He operates no mills in North Dakota. He does not operate our mills. I could not tell you how many mills he is interested in. I know of his owning an interest in other mills besides the Potlatch Lumber Company, but only from hearsay, only from rumor. I don't know it positively, outside of the Potlatch.

I have been working in connection with the Potlatch Lumber Company on and off between three and a half and four years. The Potlatch mill has operated a saw mill for six years; first a small mill. The present mill about two years. Within the last two years Mr. Frederick Weyerhaeuser has very considerably enlarged the Potlatch mill.

There are others of the Potlatch Lumber Company besides Mr. Frederick Weyerhaeuser, considerable outside of him. It is a corporation and there are a number of people in it. I cannot tell the different interests of the stockholders, but their interests are represented there. Mr. Weyehaeuser owns a very small amount compared with the capitalization of the company.

I don't know the Weyerhaeuser Syndicate. I did not say that we never sold our product prior to 1906 and 1907 in Dakota and Nebraska. Mr. Kerr asked me a question about our normal market. I said that 1906 and 1907 were abnormal years in the general lumber trade. We have always sold in Nebraska and South Dakota to a certain extent, but we did more in 1906 and 1907 than ordinary. Under normal conditions we cannot compete, even under the old rates, in North and South Dakota and extreme western Nebraska.

In going down into Pittsburg and New York, I was not trying to sell common lumber. I was trying to sell the lumber that is a very small percentage of our product which we cannot market in the territory west of the Missouri River. I was not down there trying to sell white pine. I was trying to sell in New York state anything of the higher order, that we have no market for at points west of the Missouri river.

We have a very small percentage, about one or one and a half per cent., at the outside, of high grade white pine that would be used for certain purposes, for instance, such as piano keys, draftsmen boards, and such things as that. We have no market for that west of the Missouri River, and we

have got to seek a market in the east. The same thing would apply to a portion of what we call here yellow western north pine, probably two and a half per cent. We have to seek a market for that east of the Missouri river, irrespective of what the freight rate might be. It has no sale west of Chicago. The people won't use it because they can get their stuff cheaper.

I did not sell any of this stuff down in New York City. I was talking about New York State. I sold some in Indiana, some in Ohio and some in Michigan. In Ohio I sold some common boards and some siding. I cannot give you the prices I got for them now. There was quite a number of cars filled with different items of stuff. I will give you the prices of those in the morning. We have sold a little of our product in that territory, but not enough to make a showing. It was not plain common boards in all cases that we sold there. There was some laths, some siding, and some sash and door cuttings.

Our common product comes into competition with yellow pine, the stuff that we sold in Ohio and Indiana comes in competition with yellow pine, shipped from Albuquerque, New Mexico, Williams and Flagstaff, Arizona. It is the same kind of wood and we come in competition with them at that market. That wood is the pine of Arizona and New Mexico and is the same as that we classify as western soft pine. It is classified by the Forestry Department as the same lumber. The mills of the Inland Empire classify that as western soft pine, but the New Mexico people classify it as white pine.

We cut about 40 per cent. western soft pine. We don't have to ship that into Ohio and Indiana in order to find a market for it. In one way we would have to ship it everywhere to get a market for it, and in another way we can't ship it. We formerly shipped to Chicago under the old freight rate and some of it into Ohio and Indiana under the old freight rate.

There has been no change in the freight rate to New York, but the output of lumber in Arizona and New Mexico is increasing every year and with the freight rate they have they are able to drive us further west and drive us out of the market as their output increases.

I don't state that the rates east of Chicago were not affected by this change, but in comparing the rate east of Pittsburg and the rate on our product with the rate on the New Mexico and Arizona timber, you see they enjoy a much better rate than we do, and their output is increasing every day, which makes quite a—

The rate between Chicago and Pittsburg is greater under the new tariff. West of Pittsburg and Rochester the rate has increased. They have this western soft pine around La Grande, a little bit better quality than ours. I would not say La Grande could stand a higher rate than we can. The lumber men out there have got all the rate they can stand now. I could not say right now the difference in value per thousand feet between their product and ours. Ours may be 50 cents, it may be a dollar, 70 cents or 80 cents better.

I don't know whether they make this piano key stuff there. La Grange ships to this eastern territory.

The output of the Bonner district is practically the same as that of the Spokane district. They have a differential in their freight over us of 7 cents to the Missouri river. That is the mill at Bonner, Montana. We have the same rate, 40 cents to Minneapolis. They have no less rate than 40 cents to Minnesota Transfer. I think I am right about that. There are other points to which they have a better rate, but you asked me about the Minnesota Transfer. Practically speaking, Bonner has a less differential under the new rate than it has under the old rate to Omaha, Kansas City and St. Louis. Baker City under the old rate had an advantage over us into a territory that we do not go into. Baker City and La Grande under the old tariff had a differential of five cents over us. That differential under the new tariff has been increased to Omaha. There is a greater differential now than there was before.

We compete with all qualities and grades of yellow pine lumber so far as our stock is concerned. We have to compete with southern pine in all its grades. Western soft pine for construction purposes is poorer than southern yellow pine. Southern pine is superior for building purposes.

The only parties we have been able to sell where we make the bulk of our sales in northern Nebraska and North and South Dakota, we meet the competition of yellow pine only. In normal times southern pine is our heaviest competitor. We have had to compete against Oregon fir. Practically speaking our timber is poorer than Oregon fir. There might be cases where the rule would not be applicable.

Under the old tariff Spokane City itself had the same rate into the Dakotas as they had from Puget Sound, but the surrounding territory did not. There was a graduated basis of rates on the Northern Pacific and the Great Northern, coming up to within a distance of eighteen miles east of Spokane. Lewiston paid the same rate as Spokane under the old tariff.

The amount of stuff shipped from Lewiston and that vicinity is very small, to eastern markets. The amount really shipped from Spokane east would probably be about eighteen to nineteen million feet, probably not that much. That lumber comes from east of Spokane, on the Northern Pacific and the Great Northern. Some comes over the Spokane Falls & Northern.

Our mill is south of Spokane. We pay the same rate at Spokane. There were times when we competed with Oregon fir in the Dakotas under the old rate. Under normal conditions we could not compete with anyone, practically speaking. I don't mean to say that under the old rate we could not sell any lumber. I will correct myself there and say that during a normal lumber business or season we had everybody as competitors. We paid the same freight rate that Oregon fir paid, and our quality of lumber was very much poorer than theirs. It is pretty hard to say how much under the Oregon fir price we had to cut in normal years in order to make our profit. We would quote a price in order to get the order, and perhaps we would not know how much we were under Oregon fir or anything else. We may make a man a quotation to-day in order to get his business, and make another man another quotation to-morrow to get his business. Of course, he is going to buy where he buys the cheapest.

I think our lumber is worth maybe about $1.50 less per thousand feet than Oregon fir. I am open to correction on that.

We come more in competition with lumber from the Puget Sound country than we do from the Columbia river country. That is called Douglas fir. Practically speaking we have not sold our lumber for many years in direct competition with Douglas fir. We had a five cent advantage in freight rates to Nebraska points, from the Pacific Coast territory.

I have had nothing to do with the sale of the Potlatch Lumber Company products until the last three months. I was in the lumber business at Spokane for a year and a half. Practically speaking during all that time I had to do with the selling of this particular kind of lumber that is produced about Spokane. I have had more to do with producing it than selling it. I have been engaged in producing it for about eight and one-half years.

The Inland Manufacturers, as a factor in the sale of lumber in the Dakotas, and Nebraska, have practically extended back over a period of not more than five years. For five years this Spokane western pine has been a factor in the Dakotas, to a certain extent. It did not sell while it was paying

exactly the same freight rates. Kalispell has a less rate than the coast, and Bonner had a less rate than the coast. Spokane City itself had the same rate as the Pacific Coast. It was not higher on the Spokane Falls & Northern. There is the same rate as Spokane up to and including Coleville, or Myers Falls.

I could assign a number of reasons why this stuff could sell in the Dakotas. I don't know how much we would have to cut the price in order to sell it. I may have had ideas about it. I was not the sales manager of any milling company or in the selling end of any milling company in those times. I was in the manufacturing department. This mill was located at Kalispell. The differential there over the coast ranged from seven cents down to equal, I think, at Devil's Lake, if I remember right.

We sold some of the lumber that we produced at Kalispell, in the Dakotas. We got to Minot with it, but we never got up to Devil's Lake. We did not get into Nebraska at all. We sold only in North and South Dakota. At that time there was no saw mill at Spokane. There were very few mills north of Spokane at that time. There were no mills west of Spokane; no mills south of Spokane at that time except small mills cutting lumber for local trade. These mills north and south of Spokane have sprung up during the last five years.

I was connected with the Kalispell Company up to April, 1903, from February, 1899. At that time there were no mills west of Spokane and east of the Cascade mountains. Very few north of Spokane, and they were small. They were not selling in competition with the Kalispell mill at all, but there were some shipments made. I cannot answer right now whether the Baker City mills were competing.

From 1903 to 1906 the Potlatch Lumber Company sold very little lumber in Nebraska, very little in the western Dakotas. They were not manufacturing to any very heavy extent at that time. So far as Nebraska was concerned, we could not compete with southern pine at all at that time. We could not compete in those days against Oregon fir in Nebraska, paying the same freight rate.

We had an advantage of five cents a hundred. In a part of Nebraska we did compete with a five cent a hundred advantage. The advantage is now five cents a hundred, that has not changed. We were able to compete to a certain extent on certain articles, but not on the general run of stuff. There was lots of stuff being manufactured that we could not

manufacture, heavy timber, and heavy joists, and deep joists and such stuff, which they manufacture which we do not.

We were not able to compete with them on that. Practically speaking the same condition exists to-day. I do not think it has changed at all. As far as the Omaha market itself is concerned, we cannot compete as against Baker City, but the mills in our district ship very little lumber to the City of Omaha. So far as competition in Nebraska is concerned otherwise, we cannot do it for the simple reason that they don't come into competition with us on that rate. If we want to shop to the territory that Baker City and the eastern Oregon mills ship to, we have got to ship by way of Silver Bow Junction, and pay a higher rate.

There is practically only one mill in business at Spokane. The competition of the mills north, south and west of Spokane and at Spokane, with Kalispell, would be in a great measure up to the mill man at Kalispell. If he wanted to take it on the difference in rate, he could do it and put his material in; he could do it and not give us a chance to compete. In good times he would probably take advantage of that, and in bad times he has got the advantages of us on that rate.

That same differential has not always existed against us. In North Dakota it has, for certain distances; but the mills have been able to meet it to common points, where the rate was equalized; but just now there is a difference all the way through.

I never shipped anything from Spokane in former days. Prior to this new tariff stuff moved from Spokane south, west and north of Spokane, in competition with Kalispell stuff and sold against it, for the simple reason that the output in the Kalispell valley was not great enough to take care of the trade that existed at that time. But at the present time those conditions are changed. That lumber sold against Kalispell goes now into North and South Dakota and western Nebraska. We have been able to sell some every year in Nebraska. There was no competition in Nebraska with Kalispell because Kalispell did not have the routing. Baker City did have. To a certain extent Baker City lumber is better than ours. It had a rate that we did not to western Nebraska over the Union Pacific. The Union Pacific does not reach all the points in western Nebraska.

We sold our lumber along the line of the Chicago, Burlington & Quincy in Nebraska. By "we," I mean the Inland Empire. Through Silver Bow Junction, when we could get

the cars, the main gateway was through Billings, over the C., B. & Q., west of Broken Bow. I should say take a line north and south through Broken Bow would give the territory that we supplied on the C., B. & Q. We did not go east of Broken Bow and compete on all grades of stuff. We tried to compete east of Broken Bow. We did come into competition with southern pine, under normal conditions, when they were in the market to get business. We had very little competition in 1903 and 1904, up to and including November, 1905; then again, for the last year, we have had hard competition in that territory with southern pine.

I do not sell in Nebraska on the Union Pacific, and I never have been in competition on the Union Pacific at any time. There are four competition points with the Union Pacific in Nebraska, Grand Island, Karney, Omaha and Lincoln. We could not sell stuff there against Baker City. If they had the stuff that people wanted, and we had it, Baker City would get the preference. Baker City always had a chance to sell cheaper in Nebraska. They always had a differential of five cents. They had the advantage in freight rates and to a certain extent better lumber and to a few points.

At all times, except on the Burlington, our sales have been very small in western Nebraska, except during those abnormal years. I won't say that on the Burlington they have been very small. I could not recite right now how much the entire district has ever sold in feet in western Nebraska in ordinary times per year.

We sold in 1906, I guess, about 104,000,000 feet, in 1907 something like 105,000,000. Both of those years were very abnormal; I could not say whether that stuff was all sold on the Burlington road. I would have to go to every mill in the country to verify that. During the time I was selling I was selling in Nebraska. We sold a little on the Burlington. We did not sell much in Nebraska while I was selling myself. I was not selling for the Potlatch mill, I was selling for myself as a broker.

I tried to work the Nebraska country by mail and sold a little lumber there, but not very much. In 1906 I probably sold four or five hundred thousand. Our total sales during 1906 and 1907, in the two years, were probably a million and a half feet of lumber, or something like that, just about 600,000 feet a year or thereabouts. For the years prior to 1906 there was not a market for the output of the Inland Empire. We had open competition in the latter part of 1903, 1904 and

1905. Conditions existed then as they exist now, practically. We had big stocks on hand, and we had competition to meet everywhere. We could not sell, as the others had the advantage of the freight rate. There has been no time when the Inland Empire could handle its lumber, except in 1906 and 1907. In 1906 and 1907 we were able to do a very good business. At that time there was a differential existing in favor of the Inland Empire against the Pacific Coast only to a certain territory in North Dakota—a five cent differential along the Burlington in Nebraska. In the Inland Empire the differential is still maintained. The average differential is not now greater in favor of the Inland Empire than it was formerly. It is maintained at about the same.

I would want to refer to the tariff books. The rate from Spokane to Broken Bow, is 50 cents. The distance is 1280 miles. The rate from the southern pine district is 40 cents. That is a blanket rate and applies to all the southern pine district. The distance from Beaumont to Broken Bow is 1210 miles. It is 1284 from Spokane, or 74 miles difference. The rate difference is 10 cents. 1210 miles is the average distance, I want to correct myself there.

I cannot tell whether the yellow pine people have made the contention that under the conditions and rates on Douglas fir and lumber raised in Washington and Oregon it has driven the yellow pine practically out of Nebraska. I think the records will show that those yellow pine people shipped more stuff into Nebraska than any mills in the west. Their reports will show that it is the other way from being driven out entirely.

Cross-Examination by Intervenor.

There is a range of mountains known as the Cascade mountains that come down to that section of Oregon and Washington (indicating) that divides the states into two geographical divisions, the eastern and western. On the western side you have fir, on the eastern side largely pine, that is east of the Columbia.

In this section of eastern Washington and eastern Oregon the forest is not identical. There is a great variety of kinds of timber in that section. The varieties in the Inland Empire are not exceeded by any other district east of the Cascades. The major part of that is pine. You could speak of pine in the east as you do of fir in the west.

This Spokane rate does not go back west, because there is a differential attached. I am sure of that. Under the former rate basis, we were on a five cent basis to Omaha below the coast rate. I think that is right. Outside of the differential along the Burlington, in Nebraska, and what some of the mills in the eastern Spokane district had in North Dakota, there was no differential. Out here in eastern Oregon there was a differential against the coast in our favor of five cents, and into Omaha of five cents. That is substantially the only differential that existed on the Union Pacific system prior to this change of November 1st, 1907.

North Yakima is in Washington, about 247 miles west of Spokane, I think. The Klickatat valley is just about south of North Yakima. There is a little difference between the character of the lumber they produce and that at the North Yakima mills on the east side of the Cascade mountains. The pine in the Klickatat valley is considerably better than the pine at North Yakima. North Yakima has a great quantity of fir in there.

The distance I have shown from Portland to Spokane of 541 miles. There is not a direct route over the Northern Pacific. There is a direct route from Portland to Spokane by the O. R. & N.

The distance from Spokane to Denver by the shortest route is 1333 miles. I don't know the shortest distance from Denver to Portland. I could not positively say whether the difference in the distance is 50 miles, it may be a little more than that. From points on the O. R. & N. east of the Cascade range of mountains, the distance may be a little shorter than from Spokane to Omaha. For instance, the Hood river district. So, as a matter of fact, the distance, so far as Denver is concerned, and that Colorado territory, and so far as the coast is concerned, even using Portland as the basis of distance, absolutely cuts no figure at all to amount to anything.

I said taking into consideration what we would grade or call common products, and what we would call the same when applied to coast material, I figure the difference in value of our common products under the common products of the coast at about $1.50 a thousand. All of this lumber is ordinarily sold at the mill; sold in that way at our mill, at the coast mill and at the Hood river mill.

I would have to say that the price for our ordinary common boards and a coast board of the same kind would not be much more than even for the same quality of board. Taking the

distance you speak of there, there might be an equality of price in dimension stuff like 2 by 4s and 2 by 6s, and 2 by 8s, of the same equality, taking the price at any of these mills and the price at our mill. Taking the 10 cent differential from Spokane territory into Denver and Omaha, or into any of these other territories, the Klickatat valley mill would not be much of a factor, because the output there is very small. There is none to speak of there, practically. They would be at a disadvantage in the market with 10 cents a hundred against them.

I found when I went south that there was a large district of the same character of timber in the yellow pine belt, that took a blanket rate. That was done so as to let them all into a common market with the same kind of timber.

I cannot state what the weight of a carload of our lumber is. I would not want to state that it is lighter or heavier, as shipped, than the coast lumber. I think our exhibits will prove that. The man who is buying has got no business to know the weight of the lumber. The mill pays the freight. If we were selling against coast lumber or any other lumber and our lumber weighed as much less as 10 or 20 per cent. than the other lumber weighed, it would be just that much advantage, but if it weighed more, we would have to pay it.

I don't mean to tell the Commission that I cannot tell the difference between the weight of our lumber, as shipped, and the weight of the coast lumber. If we take weight for weight, and the condition of the material when it is shipped, there is very little difference between coast weight and our weight, I think. On the shipments for a number of articles, Mr. Stephens has got exhibits that will show that.

I don't know what your stuff weighs per car. I don't know what the weight of a carload of it would be, except to surmise it. Under equal conditions, I don't think there is any difference in weight between fir and pine. For instance, take green pine timber and green fir timber, the green pine timber will weigh more. But we probably put our lumber in a pile longer and let it dry there than any other section, and its costs money to do that, so that we don't gain anything by it, practically. A pine board that has been on the pile for some considerable time will probably weigh less than a fir board that has been in the pile a shorter time. If the fir board stayed in the pile for the same length of time there would be very little difference.

I know that eastern Oregon lumber is packed and air dried

before it is shipped. I am willing to admit that no such practice as air drying maintains on the coast, but when we put our lumber into a pile and dry it, it is costing us money to do it.

Coming back to the question of weight, I will admit that green lumber is heavier than dry lumber at any time. I will admit, to a certain extent, that is the way our lumber is handled in interstate commerce. Probably 22 or 23 hundred pounds might be a fair estimate of what we ship out, in the shape of dry lumber, in interstate traffic.

The coast lumber is not dried as a practice. I know something to a certain extent about the weight of green coast lumber. The statement that it weighs 2800 pounds a thousand feet is about right. If we handled our lumber in the same way the coast does, we would be at the same disadvantage they are.

Re-direct Examination.

Generally they dry kiln their finished lumber from the coast. Flooring, for instance, is kiln dried. Air drying or kiln drying in the Spokane district costs something, and it equalizes the difference in freight on account of the weights, or thereabouts. It costs in this way, that in piling lumber to dry it, it has got to be handled at least twice more than lumber loaded green into a car. We put it in piles to dry. We put it in single piles and stack it with spaces between. We have got to do that for another reason. We could not ship our pine green, as it would spoil in transit. It would stain blue. We are compelled to put it in a pile to protect it. Our pine lumber is loaded into a box car, and that car is sealed. If that car is six days in transit, probably 50 per cent. of the lumber would be spoiled, through being stained blue. That color will remain. It goes right into the board. That same thing does not apply generally with the coast lumber. The coloring process does not take place with the coast lumber. To a certain extent it would take place with the southern lumber. That is a disadvantage our lumber labors under. We could not ship our lumber without it stood in a pile for at least 60 days, and have it in any kind of condition to ship on a long haul, where it would be closed in a box car for any length of time. Even after our lumber is piled up, it sometimes stains. We have to kiln dry all our high line stuff, in order to save it, and keep it in condition for the market. Most of the mills cannot afford to pile their clear lumber in the yard, because it will stain, even there. We have atmospheric conditions in

the places where the mills are located, which causes that, especially in two or three months of the year. Our lumber does not stain to so great an extent in dry weather. It will stain some, and great care has to be taken in handling it. That results in our carrying large stocks of lumber, while the coast lumber goes right into the market. When I was in the east trying to sell, I went there for the purpose of selling the high grade lumber we had.

Taking Nebraska, for instance, I would not want to say that the southern sales have greatly increased in recent periods, but I think they have kept upon a par with the general movement of lumber from the south in that territory.

Taking the Spokane territory, there has been something in the way of building railroads that has given an impetus to local business conditions. The Northern Pacific has been doing a great work there, and so has the Great Northern and the Chicago, Milwaukee & St. Paul. All of that work is practically completed, except on the Chicago, Milwaukee & St. Paul, and that road, so far as securing timber for its construction is concerned, is practically through. It might take some weeks or some months yet to finish the supply for that road. In competing with the coast, quality counts, and we have got to make the price an object for a man to take our lumber. In the territory, for instance, east of the Missouri river, and the Minnesota Transfers, we could not get any price at all for our stuff on the same terms as the coast.

There is a difference between the timber of the south that is called long and short leaf pine, but it does not make any difference in the price. One is selling at practically the same price as the other.

When I say that the coast timber is better than ours, I say that it is both better in the trade, and sells better, and that it is better to manufacture, and, therefore, worth more money in the trade, practically speaking.

I feel that Baker City has a better character of timber than we have, because they have more of one kind of timber, rather than so many varieties.

As against Bonner there are some points where the rate is equalized. For instance, the rate from Bonner and the rate from Spokane, to the Minnesota Transfer, was the same. From some intermediate points to other intermediate points they had the better of it, but as we went east we gradually went into the same rate. On that map I have the distances from shipping points on the Northern Pacific to Spokane, and shipping points on the Great Northern to Spokane.

In referring to this rate, and about routing it from the Spokane territory down into Nebraska, it went over the O. R. & N. All the points on the O. R. & N. up there are common points.

Baker City could not get into the State of Nebraska other than by the C., B. & Q. at the rate they had on the Union Pacific, if they had no joint rate. There was no competition, therefore, between Baker City and the Spokane district.

On the cut of lumber in the Inland Empire district on No. 4 and No. 5 boards combined, the percentage would make practically 17 to 20 per cent., or a little more than that.

The terms or designations applied to our product as to grades of lumber do not mean the same thing as they do when applied to the product of the Pacific Coast territory.

I understand that the Standard Oil Company or the Amalgamated Copper Company control the operations of the Bonner mill.

The output of the big Blackfoot mill, and the different mills about there, to the extent of about 50 per cent., goes to the Amalgated Copper Company at Butte, and the rest is shipped to outside markets. They are not complainants in our case. I don't know whether they are in the Montana case or not.

During the years 1906 and 1907, the Inland Empire's stock increased very rapidly.

The timber in the Klickatat country is not largely fir. There is pine in the Klickatat valley. The fir timber is over to the west of the pine timber. There is a region of both pine and fir there.

The mills that are complainants here, as I call them to mind now, have now big stocks on hand. As I remember it, the mills that are complainants in this case, have on hand probably 60 per cent. of the lumber in the Inland Empire.

In 1906 and 1907 we did dispose of a large quantity. We sold quite a lot, that is, the district did, but the stock on hand at the present time is, as I say, about 60 per cent. That is, the mills that are complainants in this case have about 60 per cent. of the stock at the present time in the yards, at the different mills.

I cannot say just how many million feet of stock is on hand this year, as compared with the stock on hand last year, the first of January, 1907. There is a greater amount on hand now than on January 1st, 1906, by probably 125,000,000 feet. Most of these mills have been operating for four years, or

something like that, with the exception of the Potlatch Lumber Company. Most of them were started about 1903.

Mr. Stephens presented (Record page 205) a further statement from the Forestry Department, as follows (Record page, 206):

UNITED STATES DEPARTMENT OF AGRICULTURE.

Forest Service
Washington

S-M February 28, 1908.

Branch of Silviculture
Mr. H. M. Stephens,
New Willard,
Washington, D. C.

Dear Sir:

In accordance with a promise made by Mr. E. H. Clapp I am very glad to send you the prices which are being obtained for timber in the Anaconda Copper Mining Company's timber sale on the Bitter Root National Forest.

Anaconda Copper Mining Co.	Timber Sale
March 21, 1907	Bitter Root.
Live and Dead Yellow pine	$4.01 per M
" " " Douglas fir	$4.01 " "

Very truly yours,
(Signed) Wm. T. Cox,
Assistant Forester.

Mr. Stephens filed an original bill of lading, dated February 23, 1907, of the Northern Pacific Railway Company at Cosmopolis to the Spokane Sash & Door Company, showing feet and pounds for a carload of kiln dried fir flooring.

EXPENSE BILL COPY. (Record page 208.)

Car Initials P L Car No. 647548 Date 11/13/1907 W-B. 32

Pro. 5410

Spokane Sash & Door Co. Spokane Station. 11/23/1907

TO NORTHERN PACIFIC RAILWAY COMPANY.

For Freight and Charges from Cosmopolis

Description of Articles.	Weight	Rate	Amount
Fir flooring	54200	20	10840

O R

Copy, Not to be used as an Expense Bill.

(Record page 209.)

WASHINGTON MILL CO.

Spokane, Wash.

Grays Harbor Commercial Co.

Seattle, Wash.

P. R. R. Car No. 647548.

1 x 4—	8′	No. 2 VG Fir Flg.	3515′	
"	10′	"	4017′	
"	12′	"	3920′	
"	14′	"	5049′	
"	16′	"	10432′	26933′
"	8′	No. 2 SG Fir Flg.	1053′	
"	10′	"	470′	
"	12′	"	1600′	
"	14′	"	1013′	
"	16′	"	1520′	5656′
				32589′

Mr. Stephens also filed an original bill of lading from Scotia, Washington, a little way east of Spokane on the Great Northern, to the Holland-Horr Mill Company at Spokane, showing the amount of timber and the weight of a carload of green timber, the feet being 17,288 and the weight 75,600 pounds.

(Record page 211.)

FREIGHT BILL.

2/17/08 HOLLAND HORR MILL CO. Freight Bill No. 1614.

SPOKANE, WASH.

To SPOKANE FALLS & NORTHERN RY. CO., DR.,
For Charges on Articles Transported

PENRITH, WASH. 2/16/08 G 15969

G V L Co. (Stamped) GREAT NORTHERN RY. CO.

Number of Packages, Articles and Marks,	Weight	Rate	Freight Charges	Total
Lbr.	75600	45	34.00	34.00

Received payment for the Company, 2/18/1908.
E. C. Fleming, Agent,
Per O K Collector.

(Record page 212.)

STATEMENT.

Scotia, Wash., Feb. 13, 1907.

Holland & Horr Mill Co.,
Spokane. Car 15969.

In account with
GRAHAM VALLEY LUMBER COMPANY.
Rough and Dressed Lumber and Lath
General Merchandise, Feed and Flour.

112	3 x 12 x 18	6048
10	3 x 14 x 18	630
10	12 x 12 x 18	2160
5	12 x 12 x 20	1200
95	3 x 14 x 20	6650
10	3 x 10 x 24	600
		17288

W. C. UFFORD, a witness for the complainant (Record, page 213), testified:

I live at Spokane; my business and occupation is the lumber business; have been in that business about eight years in the Spokane district generally. I am now operating a mill 24 miles east of Spokane on the main line of the Great Northern Railroad.

Our parent company is The Spokane Lumber Company. I am its manager, and secretary treasurer of the company. Have been such since its organization in 1900.

It was reorganized in 1903 with its present owners. We took in more capital and more people at that time. The business is conducted under the same name, however.

We are said to have exploited the eastern markets first from the Spokane district. We made our first shipment in 1900, and then we made some more in 1901. They were not considerable, but the product of our little mill; practically all that we produced we shipped east during those two years. We shipped into North and South Dakota, Nebraska, Minnesota, Iowa, Wisconsin and Illinois, generally speaking, possibly some other districts that I do not now remember, but conditioned upon the different kinds of lumber that we cut out of our trees, we sent it to the markets that would take it, and those were the markets.

Our rate has not always been the same from Milan. At the time we started in the lumber business in our district, there was no real Spokane rate. There was a rate of 40 cents existing to the coast. At that time we got our lumber from the coast. The most of the lumber used in the Spokane district in the early days was brought from the coast. There were some little mills operating in the Spokane district, but they were not large enough to supply the demands of the city and the district round about. We had to buy from the coast. Our district was not considered as a lumber producing district. Our timber was not considered material. The first purchases of timber by those who have made money in the east and went west to buy timber were made on the coast. It was not until some years later when lumber commenced to sell at a higher price that the smaller varieties and the poorer qualities such as are grown in the Spokane district generally were considered. After we commenced our shipments to the eastern markets and perhaps by that brought the attention of the in-

vesting public to our district, the investments commenced to be made. That was in the years 1902, 1903 and 1904. In 1901 and 1902 we only produced about 6,000,000 feet a year. In 1906 and 1907 from sixteen to eighteen million per annum. After we had operated a while, we asked the people over whose line we had to ship our product to establish some basis of rate on which we could exploit our eastern markets, and they said that for the time being they would let the coast rate of 40 cents apply, and we attempted our first shipments on the basis of the coast rate. A little later we found that they would not permit us to go into the Dakotas in competition with the coast products and in competition with the Kalispell product; that is, the Montana product generally. I went east and took up the situation generally with the traffic officials and they put our little district into a rating by itself, which gave us a rate about five cents less than the coast rate, and a rate from one to three cents more than the Montana district generally into the treeless district of North Dakota, to which we could ship. That took care of us about to Devil's Lake, the central part of North Dakota. There we met the competition from the Crookston, Minnesota, mills and the mills of that North Dakota and Minnesota district and there we could not hope to ship. It was carrying coals to Newcastle. We did not ask to be permitted to ship into their district. Our 40 cent rate from the coast commenced to take effect there, and we did not post it because we did not attempt to market. We did, however, use the 40 cent rate into Minneapolis, and beyond the transfer to some small extent, and we could pay it on the very slight portion of our product that we would ship there. That is the high grade stuff. It was not very material what our rate was on the high grade stuff, because the percentage of the freight to the price was less. The great bulk of our produst, however, is of a common character and must be marketed in the treeless districts of North and South Dakota and Nebraska.

By the poorer timber, I mean the timber of the Rocky mountain district generally. It is all of the same general character; not all alike, but from Spokane, which might be considered the western border of the Rocky mountain timbered district, to the top of the Rocky mountains. That includes a small portion of the northeast corner of the State of Washington, the northern Panhandle of Idaho and the western part of Montana from the slope of the Rocky mountains down. That whole territory is to a greater or less extent covered with

the same general class of timber. The growth is small, the timber is scattered. It is probable that it would be fair to say there was an average of five times as much timber on an acre of ground in the coast district generally as there is in that district generally, on account of the fact that the trees in our district are small and short. In our district also the limbs grow close to the ground, the timber is knotty and the character of the timber here produced, approximately 90 per cent. is of what is termed a common character.

Spokane is about 250 miles from the foot of the Cascade mountains. There is no timber whatever in that whole space between Spokane and the Columbia river. From the foot of the Cascade mountains to Spokane is our wheat belt. It is the treeless country of our district, like the Dakota country. There is no timber in that whole territory for approximately 200 to 250 miles.

The two companies operating on the east slope of the Cascade mountains that are parties here have, I understand, something more than half fir. I presume their holdings are fully three-fourths fir. Their holdings extend to the top of the Cascade mountains on the east slope. They do have some of the timber of the same general character that we do, as they reach down toward the river and get into the foot of the foothills. For instance, they are members of the association of lumbermen which has Spokane as its headquarters, on account of the fact that a small portion of their timber is of the same general character as ours, the large portion of their timber, however, being of the same general character as the coast; they are members of the coast association also, to get records that each district compiles. The most of their product which is of the character that ours is, is sold locally. The mills of the Cascade Lumber Company at North Yakima being situated in what is now perhaps the greatest fruit district anywhere, put the larger portion of their coarse product into fruit boxes, and that which is not adapted to fruit boxes is sold largely at home for small construction, little houses.

Taking the district I have been terming the Spokane district, that is northeastern Washington, northern Idaho and western Montana, there are about eight different kinds of lumber, western pine chiefly, nearly one-half; white pine about 10 per cent. I would say; perhaps 40 per cent. western pine and 10 per cent. white pine, the pine growth therefore being about half. Our own stand is about one-third what we used to call tamarac. The department, I think, calls it larch and we term it larch. The district generally would not have to

exceed 25 per cent. of that larch or tamarac. Then the balance is perhaps equally made up of what the department terms Douglas fir, but it is a small growth fir, the trees are hardly as large as our trees of other kinds of woods. It belongs probably to the same general family as the coast, but our district is dry and the trees never did grow large. The balance of the stumpage would perhaps be equally divided among that class of Douglas fir which we call red fir, and white fir which is even yet smaller; spruce which is about the same size, and cedar which is larger but coarse in character and full of knots. We make no shingles whatever in our district because it is so full of knots, and there is no finish at all in the cedar timber in the Spokane district; and then hemlock, and that is the poorest we have and of little value.

White and yellow pine make two kinds, larch three, the two firs five, and hemlock six, and spruce and cedar eight.

Perhaps three to four feet at the butt would be a very large tree in our district. Our own logs last year required about twelve to make 1,000 feet of lumber, and the coast trees, for instance, would perhaps average one log to make a thousand feet of lumber. We speak of four-log timber. It runs four logs to the tree quite frequently. That would be 65 feet. I would think 75 feet high of timber that would be put into saw logs would be the limit of our size. Saying that it would take twelve as against one, I meant logs. The logs in the Spokane district perhaps would average a hundred feet to the log and the logs in the coast district would average a thousand feet to the log. The smaller they are the more they cost to handle.

Our present mill was completed and started to run January 14, 1903. It is a single band mill of modern character, with a capacity of approximately 50,000 feet of lumber per day of ten hours. It is a fair, medium size, representative mill of the better class of small mills of the district.

I have told the character and class of our product by stating that we had eight different kinds of woods, and showing the percentages, and I have stated that approximately 90 per cent. of our product was on lumber of the coarse variety and small, cut into small stuff, used for the construction of small houses, small buildings in agricultural districts, and the little tenement houses in the towns. We do not have any city trade. We don't attempt to supply the material which goes into the construction of large buildings at all. I have a home in Spokane and am in the lumber business, and yet I had to go to the coast to buy the large timbers that went into the construc-

tion of the basement of my own home. I also bought the finish for the upper part of that same home from the coast, and our floors are coast fir. The only thing we were able to use in our own home of our own product was the small studding that went into the partitions, the two by fours, two by sixes and two by eights, and the sheathing boards that were nailed onto those, that were covered up with something else.

Some of our people are interested quite heavily in business blocks in Spokane, have built a good many in the last year, and the most of the product which enters into that construction, not iron or steel, has to come from the coast, and most of the fir flooring comes from the coast.

About a year ago, realizing that our district as a whole was up against it for a market, I took the liberty of calling upon the director of purchases of the Great Northern Railroad. I stated the situation as it was felt in the Spokane district at that time. They were buying, as we were advised, a large portion of the railroad construction material which they used in our district, from the coast and shipping it in there. We told them that the industry was being pushed, in so far as it was possible, by mills located on their lines who had a character of timber peculiar to its district alone, that it was hard for us to market, and we felt we were entitled to their best efforts to help us find a place for it, and certainly all the little stuff that they used, in short culverts and in railroad ties and in things that they could use of a small character in our district, they ought to buy from the mills at home. He said that had not particularly occurred to him before but he believed it was right and he said he would take special pains to use all possible in the home territory of the product manufactured by the mills in that territory, and he asked us what we could produce it for, and I went into it with him at length, covering the cost of logs and manufacture in our district, and he fixed a price of $12.50 for railroad ties, which are seven inches by eight inches square and eight feet long, and he said that the mills of the district could produce as much as they cared to of the coarser kinds of wood and put it into railroad ties and they would use it in the construction of their new lines in our district, and in the repair of their old ones. About 20 per cent. of the total cut of our own mill last year went into that class of stuff for the Great Northern Railway people. This year we attempted to do the same, but he said that they would not be able to use any to speak of, and if they could buy it so cheap from the coast that they would not be warranted in using our product at any price that he could see that we could afford to make it for.

I said we furnished ties at $12.50 per thousand feet. That makes 46-2/3 cents apiece. We would be very glad to continue that contract at even a less price. The other 80 per cent. of our product went into small piece stuff, 2 by 4s, 2 by 6s, 2 by 8s, 2 by 10s and 2 by 12s, and 1 by 4s up to 1 by 12 boards of the different grades of common lumber, which we attempted to sell in the treeless states that I first mentioned, North and South Dakota and Nebraska. A few of the better grade of common lumber that those states could not use we sold in Iowa and in points beyond the Missouri river. Those better grades of lumber that were not used in the same states that I speak of we did not get much more money for than we did for our poor stuff, but we had to dump it some place where it could be used and get what we could for it, and the northern and southern mills made the price and we had to meet it if we sold it, and we did meet it and got rid of it. I have a typewritten statement showing the states that we moved our product into.

It is probable that the factory plank that western pine is said to produce a large quantity of, and which is of high value, may be mentioned, and I will explain that. There is one way in which we may be able to get rid of possibly 20 per cent. of the product of the western pine log, and that alone, and that is to cut it into factory plank, used for sash and door purposes. Now, factory plank is of a peculiar character. The knots are large, but between those the lumber is clear. There may be a hole where the knot has dropped out. The lumber is not suitable for one inch stuff, because the knots drop out and leave these holes. If cut into one inch lumber it would be so poor in character and quality that it could hardly be used except for the cheapest kind of use; but cut 1-5/8 inches thick and sold as 1-4/8 inch material, kiln dried and surfaced, with the limit of expense put upon it to save it, the product may then be used in the sash and door factories, and perhaps 20 per cent. of our product would cut that way. Now we could not ship it and pay the freight that there was upon it, and get anything out of it. So we inaugurated a little department that we call our cutting room, and the poorest half of it was turned over to that cutting room, where we cut the knots and the holes out and the defects out and cut it into different sizes which make the different pieces that go into window sash and the different pieces that go into door construction. Those we sold to the large sash and door factories in Wisconsin and along the Mississippi river.

But in operating that cutting room approximately thirty per cent. of the plank that we turn into it would be burned up; that is, it was waste. We cut it out. It was better to waste 30 per cent. of the plank than it was to pay freight on the whole plank. Six per cent. of our total production therefore, after it was manufactured and all of our expense put upon it, we found it cheaper to waste and burn up, for the sake of increasing the value of the balance of it that would stand the freight charges. This year we have no market for those cuttings, and we have been obliged to discontinue that cutting room, so we cannot cut that product into factory plank. We must put it into the grades of common lumber and hope for a market for it in the agricultural district.

(Ufford Exhibit No. 1, offered in evidence, Record page 231.)

Referring to this table, the witness testified:

This table contains all the shipments that we made last year. It refers to our own mill. It is a tabulated statement of the shipments of the Spokane Lumber Company from Milan, Washington, showing the different states into which we shipped our product, and the number of cars that went into each state, being all of the shipments that we made that are affected by the great advance which went into effect by the new tariff of November 1st, 1907. It shows the estimate of weight of 51,600 pounds.

I got that estimate from the records in the coast case from Mr. Woodward's testimony. He is the traffic manager of the Northern Pacific Railroad, and it is his statement of the average weight of the shipments of lumber from the Spokane district for the first nine months of 1907. It shows the total amount in dollars and the total amount per car that the freight would amount to on the old rate and the same on the new rate, the difference per car, the actual number of miles that the car traveled in going into each state. It also shows the actual weights as shown by the freight expense bills which we paid, the actual dollars which we paid in freight per car, the actual dollars which we would have paid in freight per car under the new rate, and the difference in freight per car. That applies to the full year of 1907, and it covers 425 cars. We did not ship all this stuff kiln dried, but we never shipped anything green for two reasons. The product of our district would spoil in transit if shipped green, if it was three days in a closed or box car.

It would stain and become permanently discolored so that it would reduce even the small percentage of high priced lum-

ber that we cut to the basis of the very lowest priced lumber we cut, and when manufactured into certain things it would not be fitted for those purposes when discolored, and therefore it would practically spoil it. So we have either to kiln dry it or air dry it, dry it at whatever expense it may be, practically all of its except what we did ship to the railroad or what we are from time to time able to sell to the railroad, and that we sell f. o. b. We have at our mill a dry kiln which cost us about $25,000. That has got nearly ten miles of steam pipe in it, for the purpose of kiln drying our product, and ours is one of the little mills.

(Ufford Exhibit No. 2, offered in evidence, Record page 234.)

Referring to which the witness testified:

This exhibit covers a statement of all lumber shipments for the year 1907 affected by the change in rate, and shows the same data that the other did, except that it shows the number of cars that we shipped, at the rate we commanded from the railway company previous to the advance, what the freight paid would have amounted to under the new rate. It used not only the 51,600 pounds shown in Mr. Woodward's testimony as a basis, but also the actual weight on which we paid freight, and it summarizes it at the bottom, and also on the first sheet, which shows the total 425 cars. We had under Mr. Woodward's estimate of 51,600 pounds to the car 21,000,930 pounds. The amount of freight at the old rate would have been $234.86 per car; under the new rate $261.27 per car.

The total average mileage hauled, and this included all of our shipments even as far as New York state and throughout the central west, and covered all the rates, was 1441 miles. It showed an average actual weight per car for the 425 cars of 50,594 pounds; the actual average freight rate paid per car $234.21, which under the new rate would have amounted to $258.53, or a difference of $24.32.

The actual weight was less than the estimated weight by just about 1,000 pounds. I could not give the average mileage west of the transfer points. I could only estimate that, but I have the average mileage by states. Our shipments into North Dakota averaged a haul of 1115 miles. The actual freight paid on that average haul was $204.21 per car. This is not all kiln dried stuff, but it is all completely and thoroughly dried, air dried or kiln dried. Such portion of it as needed to be kiln dried, we kiln dried, but all of it was dried before shipment was attempted, at whatever expense was necessary.

To air dry it we have to prepare yard room and put it into piles, and wait for it to dry. We only turn our product about once a year. We shipped approximately 16,000,000 feet of lumber last year. We manufactured approximately 16,000,000 feet of lumber last year, and we have on hand and carry about 16,000,000 feet of lumber every year. Our stock is increasing very rapidly. What I mean by that is that it increased very rapidly last year. We are not running at all now. We could not run now.

Our North Dakota shipments average a mileage of 1115 miles with an average weight of 49,372 pounds. We paid $204.21 per car. The new rate would have made us pay $223.52, or an increase of $19.31.

In North Dakota our average rate was about 36-1/2 cents, but we had until November 1st the rate which our railroad permitted us. We are 24 miles east of Spokane. When the November 1st tariff was issued they put the whole district under the Spokane rate and raised us about seven cents, or to 40 cents for the western North Dakota territory, 40 cents to the first point in Dakota, and then 41, 42, 43 and 44 cents to the middle of North Dakota, and then 45 cents, which rate applied to the Transfer. The average raise was from 33 cents.

Taking all the distances to which our shipments went, our average increase was seven or eight cents. You see we saved perhaps a little more than some others, because we had not been permitted to do business in there before the increase Our shipments into Nebraska averaged a mileage of 45 cents to most of those points. There were a few points that we reached where the mileage was long, where the rate was 50 or 55 cents.

The average weight of a car into Nebraska was 50,484 pounds. Under the old rate we paid $222.81; under the new rate $244.30, an increase of $21.49.

Into Wisconsin we shipped 95 cars. Now this included that cut up stuff that I spoke of, and all our good stuff; 95 cars out of about seven or eight hundred of total shipments are manufactured. The average weight into Wisconsin was 52,717 pounds, the average mileage 1,755. Our rate at that time was 50 cents. Our present rate is 55 cents. The old freight collections that we paid were $263.58 a car. Under the new rate they would be $289.94, an increase of $26.36.

Into Iowa the average mileage was 1786 miles, the average weight per car was 52,116 pounds, the average freight paid $259.38, the freight under the new rate would be $285.12, an increase of $25.74.

On our Minnesota shipments, the average mileage was 1443 miles, the average weight of a car 47,488 pounds. Most of that went on a 40 cent rate. It was special stuff. It was like carrying coals to Newcastle. It was stuff that the Minneapolis market was short of, which they had to buy some place. We found out about it and manufactured it specially for them and shipped it there. The total was only 36 cars out of the seven or eight hundred which we shipped. The freight paid was $197.39; the freight under the increased rate would be $221.18, an increase of $23.79.

Into Illinois we shipped 29 cars of similar character, an average mileage of 1858 miles; average weight 49,997 pounds, old rate $249.98 per car; under the advanced rate we would have to pay $274.88, an increase of $24.90.

Into South Dakota, which is the territory that our product belongs to more than any other place, we were only able to ship 28 cars out of seven hundred manufactured. The average mileage was 1456 miles, the average weight was 54,358 pounds, on which we paid $258.14 a car, and under the new rate we would have paid $294.25, an increase under the new rate of $36.11.

Now, you will notice that is a third greater increase than the increase to any other point, and yet that is the district into which we ought to be permitted to ship our product more than anywhere else. Of course, we know where that increase is, and our own trunk lines are not to blame for it.

The connecting lines into that territory get a larger haul per mile for the local charge than any place else on earth that we ever heard of, and the larger lines have absorbed most of it, until as I understand they became tired of the selfishness of the connecting lines and refused to do it any more, and when the new rates went into effect, the through tariff provides in some cases a division under which the connecting line gets an even larger division than their local published rate, and the through lines say that they absorb all that they care to of it, and it makes us pay a rate which is entirely prohibitory. The trunk lines are cut out of the business, the mills that properly should supply this district are cut out of the business, and it is turned over to the south at a rate from ten to fifteen cents or an average rate 12-1/2 cents less than we have, and their southern mileage is about the same as ours. Our present rate into South Dakota would average about 55 cents against the southern average in that territory of 35 to 40 cents. Our own home lines say that they are powerless to do anything about it.

Into Colorado we shipped five cars with an average mileage of 1285 miles; an average weight of 48,824 pounds to the car; freight paid $213.11. Under the new rate we would have to pay $236.58, an increase of $23.47. We shipped one car into Montana, one car into Michigan, one car into Pennsylvania. That average mileage was 2346 miles. The freight we paid was $324.03; under the new rate it would have been $351.67 or an increase of $27.64; and into Wyoming we shipped one car.

The larch or tamarac in the Spokane district does not have any finish in it to speak of, or very little. It chips or checks to such an extent that while the contractors and architects did try to use it a few years ago it has practically been given up and we do not save it at all at our mill any more. It goes into our common dimensions small piece stuff.

The mills on the Northern Pacific east of Spokane 18 miles, and from there east, had practically the same shorter rates, as we call them, into the western North Dakota territory that we on the main line of the Great Northern did.

Of course, it is understood that there was a very great car shortage everywhere last year. We were not able to get cars, and would have been able to ship a good deal more lumber last year if we had been able to get cars, but there was so much railroad construction everywhere, we understood they had to furnish cars for that, and we took what we could get, what was left. That railroad construction in the territory adjacent to Spokane is almost entirely over. The purchases and shipments of lumber for any railroad construction in our immediate district are about over. The Milwaukee is building through there, and has been buying a lot of coast material and shipping into our district for use in its railroad construction, but the purchases are nearly over and their shipments are nearly all made. There have been several interurban and suburban electric lines which have been built, but they are nearly all finished.

Referring to the years 1906 and 1907, the south and the coast both enjoy a very large export trade. When they can sell their lumber abroad, they do it at the higher prices they get then they can get for it at home. Both in 1906 and 1907 their export trade was not very good, but the demands upon those districts generally for car construction and railroad construction material were very, very large. Those people in these years did not care for the markets furnished by the agricultural districts, and our business therefore was better than it ever had been before. In 1906 our district produced more

than it ever did before and shipped more than it ever had before up to that time, and yet our car shortage was so pronounced that we were unable to ship within a hundred million feet, or one-tenth as much as we produced.

During 1907 that same condition prevailed, but we had hoped to overcome it. We produced perhaps a little more, and our shipments increased to some extent. Yet while it was the year of largest production, the largest shipments that we ever had, and probably the most prosperous year that the lumber industry has ever experienced anywhere, we were unable to get rid of our product, and we have two hundred million feet on hand, or one-third more than we had on hand two years ago, and this year we are out of it entirely. There have been no shipments made from our district at all, and we could not make any that would give us the cost of production.

I tried to sell dimension stuff in Minneapolis and in North Dakota when I came through, to one of our best customers, in which line of yards some of our own people are also interested, and they told me it was useless for me to attempt to make them any sales; that we could not make them a price that would be as low as they could buy it from the coast; that even southern pine had recently been shipped to Minot, North Dakota, so they were advised, and that the coast people were making at that time a price of $19, $19.50 and $20 per thousand into that general district delivered. When I say the coast people, I mean the northern Washington coast people, who are able to ship on the Great Northern line. I was talking to a Great Northern line yard man. Taking our freight out of that, it would only give us $8 per thousand at our mill for that product, which would be but little over half what the average cost to us would be, so it was entirely impossible for us to sell to our own people in our own home territory.

I attempted to do some business in Iowa, where we had sold the better class of common lumber, but they said that the south was making prices, that they had a far better rate than we did, and when they chose to come up into our country and get rid of their lumber they were enabled to, by reason of the better rates, and we could not sell them at all. We shipped two cars in January.

Those purchasers said that they felt the coast dimension stuff was worth from 50 cents to $1 more than our own product, 50 cents to $1 per thousand feet, that they would have to buy our product a little cheaper than they would the coast product, in order to use it, because our dimension stuff is

larch and the coarser grades of fir, and full of knots, brittle and brash, breaks more easily than the coast dimension stuff of the same character. If we sell common lumber we have to meet the prices of the man who has the ablity to make the market prices. We have not the ability to make the price. Our district is a sort of a stepchild now. I think that same condition prevails covering all of the lumber producing area in the Rocky mountain district from Montana to the Spokane district.

We could not ship now into South Dakota and Nebraska under the present market price without losing several dollars a thousand. We have a man who lives in Nebraska, who has a very strong personal following, and his own friends, his own people, are not able to give him any business. His salary and expenses up to date since the first of January are far greater than the total of the invoices covered by the sales that he has made since the first of January. We could not begin to meet the competition from the south or from the coast either, when the coast chose to make the prices, and they choose to make them when they do not have an export or railway trade.

We have the same rate all through the Rocky mountain districts through Montana and into the Spokane district. We have the same general rate over all roads into the Nebraska territory regardless of the routings. Under the old tariffs the Great Northern and Northern Pacific got into Nebraska by the Burlington. The Great Northern and the Spokane Falls & Northern had the same rate into Union Pacific territory in Nebraska that they did into Burlington territory in Nebraska, but we did not ship so very much via the Union Pacific. Our friends were on the Burlington road, but it was almost impossible for any road off the Northern Pacific to get cars to get into the Nebraska territory, and in so far as possible our Nebraska shipments were sold in the northwest corner of Nebraska because going that way we were enabled to give the line on which we were located and from whom we asked our favors, the benefit of all our business that we could. That is the Great Northern. Our shipments were largely routed via Sioux City; it was pretty hard for any mill off the Northern Pacific to get cars to get into Nebraska last year, the car shortage was so pronounced for everybody.

The rate to the Spokane territory on commodities generally, that enter into the cost of living, are greater than they are to the coast. Spokane is said to be a town where the cost of

living is as high as any town outside of Washington and New York. The Spokane district generally is a high cost district, and an expensive place to live in. And everything that is not produced at home, and everything that we have to buy east we have to pay the freight to Spokane, which in very many instances is as much as the cost of the thing itself; and the rate is the rate from the eastern territory to the coast, plus the rate back, which is almost twice as much.

The rate is not the same from Milan, from our place of business to the Minnesota Transfer points as to Missouri river points. It is five cents greater to Missouri river points. Shipments from the Spokane territory to the Missouri river and to the Minnesota transfer have to be hauled through Kalispell. From Kalispell they take the same rate under the new tariff to Missouri river points as they do to the transfer points.

Cross-Examination.

The cars that we shipped in 1907 went into the northeast corner of Nebraska, or pretty well toward the center, via Sioux City and into the district around Broken Bow and west of there. The statement shows that the number of those cars was, I do not remember. This list shows about seven hundred cars of lumber manufactured, something between that and eight hundred. Ten per cent. of that was not select, but it was better than common. Not five per cent. of our product was select. Out of 16,000,000 which we inventoried, 87,000 feet was select, on January 1st. All but about five per cent. was common. Part of that was small dimension stuff, part boards, ship lap, and part of it was dressed and matched. Outside of our select I think you have pretty nearly covered the other kinds of lumber. We sent a great many cars into Minnesota and a good many into Iowa, South Dakota and Illinois.

If the testimony in the case given by other witnesses is to the effect that they have never been able to get into Nebraska or South Dakota or Wisconsin with common lumber, and that testimony is correct, there must be some difference between our common lumber and theirs, or else the coast must be able to go somewhere else with it to a better advantage than we can. They have got the world. They do not need to make small dimensions.

We don't compete with northern white pine in all this territory I have described. Wisconsin, Minnesota and part of

Nebraska is the territory in which common northern pine is sold, that is the territory in which it used to be sold, but you must understand that the northern pine territory is rapidly decreasing and they are not the factor in the trade they used to be. We do not pretend to get as much for our product as the northern mills do.

I said during my direct examination that because of shipments from Cranston I would have difficulty in going further east in Dakota than Devil's Lake. That has always been true, more or less. I said that there were certain kinds of lumber which they did not use in western North Dakota, the very best grades of common which we did not have but little of. They could not use that in either of the Dakotas, but they did use it in Nebraska and we had to sell it somewhere. They used it in large quantities, in Iowa, and they paid the highest price there of anywhere. We could get the most for it in Iowa, and so we went to Iowa with it, and we took what we could get for it, and were much obliged for it, because we had to sell it. That was the better grade of our common lumber, some of the one inch finish, some of the wide boards. I sold twenty-five cars of boards, wide boards, in Iowa, just before our recent unpleasantness. The men who bought this did not buy fir from the Booth Kelly Company of Eugene, Oregon, for instance, because the Booth-Kelly Company could get more for them at some place else. I don't remember about what I sold those boards for. One of my competitors asked me that, and I did not want to tell him, but I will have to tell you now. He sits right behind me. He tried to get that busines but I beat him out, and if I remember rightly, we got $26.50 per thousand feet for these special twelve inch boards delivered in Iowa. The freight is not yet paid, but I will tell you what it will be. We are not parties to the injunction. We are paying what we have to pay to get deliveries. It would net us somewhere from $14 to $14.50 at the mill. Those boards are 12 inch, 20 feet long. We don't make anything longer than 20 feet.

In 1906 I sold lumber in Iowa and Nebraska, never in Kansas, but we have each year had to market a certain portion of our product in that territory, because there is no demand for at any place else.

We have to grade our lumber as the eastern mills grade their lumber, and sell it where we can, for whatever market price they make. In the Iowa territory the northern and southern pine mills both are competitors. The dealer who can

use the southern pine buys it, because he can buy it so much cheaper than northern pine; but if he can't use the southern pine and still can't use the high priced article we perhaps can talk him into paying a little more for our product at times. That depends on the salesman and on the dealer. Our product, however, comes more closely into competition with the southern pine than it does the northern pine. We call it yellow pine.

I don't think much stumpage could be bought in the Inland Empire for much less price than the values that have been given in evidence here, but that is not on account of what we can get for it today manufactured. It is on account of the fact that it has been fashionable, for the last few years, to buy stumpage as an investment, and we have bought and sold stumpage on speculation, where we have paid more than we knew could be obtained for it by manufacturing it, and we have sold it at a profit. I think the same conditions prevail on the coast as do in our district, as I have just stated. People have paid high prices for coast stumpage. People who have put some of their logs into Puget Sound have got fancy prices for their Coast stumpage, and they look for the time to come when they can get fancy prices again.

When Mr. Bloedel stated his lumber at the highest average price of any witness in the coast case, and he estimated that it was worth two dollars a thousand, I could probably testify along the same lines that Mr. Bloedel did. I am on that side of the case and the statement would be correct in both cases, but along the line of his testimony, arguing from the same general standpoint with Mr. Bloedel, I would say that stumpage is worth what you can get for it, no matter where it is, and no matter what you pay for it. But you cannot get for it on the Coast or in the Spokane district as much as that, if you manufacture it intelligently in both places, and ship it where it has to be sold. You can get two dollars a thousand more for the average coast product, manufactured, than you can for the Spokane product or the Rocky Mountain product manufactured and from that standpoint I say that it is worth more. There have been sales at different prices.

If the testimony in the coast case stated that the rail mills of western Washington have never been able to sell common lumber in eastern Nebraska, then all of the testimony that could have been produced was not produced, because we have sold common lumber in Nebraska for higher prices than we have sold our own. We shipped some coast lumber into Ne-

braska when we were selling our own there, and got more for the coast stuff than we did for our own, in dimensions. Our produce largely consists of coarse, common lumber. I refer to the northern, western and northeastern parts of Nebraska. None of us attempted to reach those markets with common lumber, except in the case of the coast, and their product is larger and longer than ours. Those cars that are sold in Illinois in 1907 were largely factory planks with a little finish, but not much. That I sold in Wisconsin was almost entirely the same character. We put in this factory plank plant about a year after we built our mills. We found that we had to do something to get rid of this common coarse product, and so we put in the factory plank plant, and we had to throw away one-third of it and could not sell the rest. That amounts to about 20 per cent. of our cut, one-half of which is very, very coarse and common, and the other is on a par with the average of our product. We never were able to compete with the coast when the coast chose to move their product into territory we were seeking. We never could do it and we never can do it. I mean the territory we were both seeking as the market for our product. The coast can undersell us and get rich. They can sell at a price that would close our mills, and they would get rich.

(The witness was then asked whether it was his contention that his product is so much inferior to that of the coast that this rate ought to be made so low as to equalize the inferiority of the lumber in order that he could compete with the coast, and he testified):

There are three districts we can move our product to. One is North Dakota, one South Dakota, and the other Nebraska. Our competition in those districts is the South, insofar as they have the same general character of product, and they have a good deal of the same general character, when they do not cut it into big construction material, or export material. To those three districts they have approximately the same mileage, and a very much less rate. Then our other competitor is the Coast. Almost the same conditions apply there. Both of these districts get an average in the neighborhood of two dollars or more for their product, if intelligently manufactured, than our district does. Granted the same degree of intelligence, the same kind of material and the same market conditions prevailing, the Coast gets a couple of dollars more a thousand out of it than we get at the best, and that two dollars puts out of the business, when the Coast chooses to get into it. When they have got a lot of foreign business

and a lot of big timber business, they don't pay any attention to us; but when they have not they cut their stuff up small and we take what they will permit us to take. It is true that market conditions are poor at this time; but the same general conditions exist with everybody, and those fellows can meet them while we cannot. The Coast stumpage and all southern stumpage is greater by two dollars than the market value of the stumpage from Spokane east to the top of the Rocky Mountains. There are three districts in which the lumber is manufactured today and in which it is going to be manufactured. One is the south, which has this big eastern belt. The other is the Coast, which has the standing timber in the world today, west of the Cascade Mountains; and the other is this territory, we speak of as the Spokane-Montana district, from the top of the Rocky Mountains to the city of Spokane. It embraces all different classes of timber. It is poor and small, and yet it is timber which, when cut up, is used for small construction and cannot be used for the special stuff which both of the other districts supply. It has an average manufactured value of two dollars a thousand less than the average Coast lumber and more than two dollars less than the average southern lumber. Do the very best we can, we cannot begin to compete with the Coast in cost of manufacture. Our trees are small, and it costs just as much to handle a log with a hundred feet in it as it does to handle a log with three hundred feet. Our logs average a hundred feet, while the Coast logs perhaps would be a thousand feet, and it costs us two or three times as much to log our stuff as it does the Coast. Those people have such thick stands of timber and such big trees that they can log on a large scale, and naturally can do it cheaper than we can. Our little company has good men connected with it, and we have got money enough to build a railroad into our timber; but we have no way to get our money back, if we build one. We are hauling logs for miles on sleds for use today, as they did in primeval days. Ours is not a railroad country. It will always cost us more. From the very nature of our timber, from the mill to the cars, we have got to manufacture it into all of the forms that enter into an expense account. The Coast people not only produce big timber, but they take it out of the water, run it through the saw mill and dump it on the cars with machinery, at a minimum of cost. Our stuff has all got to be cut up into small sizes, and there is a large expense attached to it. The manufacturing cost is greater and the selling price is less, at least two dollars a thousand.

Not grade for grade, but the only way you can figure it is on the average of what you get out of a tree. This Commission cannot enter into what it costs us; but they can enter into what we get out of it, and where we have to go with it. We have asked for a ten cent differential over the Coast.

If our economic conditions and our natural recourses were the same as they are on the coast, we would need the differential that we requested, because our stuff is not worth as much as theirs. Even if we had the same kind of timber that they have and the same cost of manufacture, and everything of that kind, we would still need the differential because we cannot market our product as the Coast and the South do, because they have the world for a market. The Booth-Kelly Company, for instance, have got California, which is the highest priced market. It is not my contention that by reason of our situation a special market should be preserved to us to equalize us with people to whom nature has extended greater advantages.

Our mill is one of the best of the smaller places in the Inland Empire. There are two or three very large mills further west, but ours is not in that class. We can perhaps manufacture as cheaply, and can ship at as good an average price as the best of the mills. I presume that what we get for our stuff would be about the average. We are said to market our product to better advantage than most of our neighbors. The capacity of our mill is in the neighborhood of fifty thousand feet for ten hours.

There are about four hundred mills in the Inland Empire territory. I keep speaking of the Inland Empire, but when I do I do not mean the Spokane district alone. I think of all our general manufacturing district.

Our Association compiles records taking in Montana the mills owned by the Amalgamated Copper Company and by the Great Northern interests in the northern part of Montana. Their product is fairly representative of what our product is, and we have got to know how much they produce and where their market is, so to know what to do with ours. When I say there are four hundred mills in the Spokane district, I mean in that whole territory.

Of those four hundred mills, one-half of them are not big enough to hurt. We get reports, if I remember correctly, in the Association, from about 175 mills. Those are representative mills, owned by people big enough to understand the question and to make an intelligent answer, and those are people representing the largest portion of our cut.

There are a lot of mills in our district that produce thirty thousand a day; some that produce twenty thousand a day; and some that produce three hundred and fifty thousand. There is one isolated case that has that capacity, but they don't run every day, and they don't run nights. Some of them run all the time and all of them try to run a part of the time. When you speak of actual production as distinguished from capacity, that is another story. It is what they do, and not what they could do. We happen to run more than some of our neighbors. The average capacity of the 175 mills which go to make up our report of a total production in the neighborhood of a billion and a quarter feet in the whole district would not be far from 3,500 an hour, or 35,000 a day of ten hours.

I think our timber is about a fair average of the timber tributary to the other lines which lie within seventy miles of Spokane. Our records show that the total district has about ten per cent. of white pine, and our own mill does not have quite as much white pine as that—not over five per cent.

The reasons which induced me to locate in that district, instead of on the coast, were these: I was in the banking and brokerage business and I loaned a fellow that had a saw mill some money. I had to take the saw mill, and I have it yet. I loaned him six thousand dollars, and most of our crowd have been trying to get that six thousand dollars back, and we have so far failed. We have put six hundred thousand dollars on top of it to get the first six thousand back, and there is not much show to do it. We were really trapped into it. I loaned that money, and then we bought some timber land and a little mill and tried to get the money back. Then we bought more, and then I saw there was no chance to get out without building a little larger mill, and I tried that. Then the Northern Pacific Railroad had a lot of timber in that district, and they thought it was a good time to get rid of it. I helped them to sell two hundred thousand acres of it, and bought sixty thousand acres from them and got some other people interested. I want to say to you, although I have gotten into it so deeply, it would be better judgment to get out, and I would if I didn't hope for better conditions. We went to the Great Northern people some years ago and told them our case, and they did the best they could for us. But they said, when this new tariff was issued, they had to put us into another class. I don't know why they put us into another class; they did not tell me that. They said they had to take me out of the fav-

ored territory, and that I would have to look at it from a broader standpoint. I told them that I would take my chances with the other fellow.

We do our logging on the snow in the winter, but we have to log on wheels to same extent.

Further Cross-Examination (Rec., P. 273).

I cannot tell you how much it cost us per thousand feet to make lumber. I said that the average Pacific Coast stuff was worth two dollars more than ours. I did not say the lumber was worth two dollars a thousand more. I ventured to say that it cost two dollars a thousand more in our district than it did on the Coast. There are a whole lot of things that enter into cost. And there are hardly any two men who will answer that question alike. It is a matter of book-keeping. I can go into the details of cost, but other men would have to go into exactly the same details in order to make an honest comparison. The cost of the Spokane Lumber Company during the year of 1907 for taking the lumber from the trees and putting it into money, not including any interest charge whatever on the money used, because that varies with everybody, and not including any depreciation to our plant, because we do not have anything left to depreciate, when I was there was $14.60, excluding stumpage.

I spoke of the Inland Empire in the way that lumber men speak of it. Perhaps the better term for it would be the Rocky Mountain district, from the top of the Rocky Mountains west to Spokane. You may stop there. We do not go much farther west than that. There is not much west of Spokane, not much timber. There is an area of two hundred miles of wheat fields. The district to the south through eastern Oregon and north to the British line. We do not go south to the California line, we stop at the northeastern corner of eastern Oregon. I think of it as the northwestern corner of eastern Oregon, not very far west.

I was president of the Western Pine Manufacturers Association last year.

(The attention of the witness was then called to a copy of the constitution of that Association and he testified):

That is the one we worked under and it has here a description of the Inland Empire, but we started that with a small nucleus of men and we were trying to take in all that district that we could and to get other members in, and we offered

every inducement we could to get people who were manufacturing lumber interested in it.

(The witness then read the following from the constitution):

"The name of this organization shall be the Western Pine Manufacturers' Association. Its object shall be to further the interests of the lumber producers and shippers on the Inland Empire. That is the district bounded on the north by British Columbia, on the east by the Rocky Mountains (that means the top of the Rocky Mountains), on the south by California, Nevada and Idaho (and, as a matter of real fact that is not a lumber producing district, except the northeastern corner of Oregon), and on the west by the Cascades." As a matter of fact, there is no timber to talk about between Spokane and the Columbia river. Two of our members, as I stated, have a little pine on the east slope of the Cascades, and so we took those fellows in.

I will tell you again. The Inland Empire, as we think of it and speak of it, regardless of technicalities, is the territory from the top of the Rocky Mountains south to and including the northeastern corner of Oregon. Now, there might be little extensions and districts that would reach beyond that in isolated cases. But the same general territory I have mentioned embraces the lumber produced in the territory I have been talking about. The same general character of lumber goes to other people. The Amalgamated Copper Company has large interests in the lumber business in that district, and produces small timber for their mining interests in the State of Montana. The rest of their lumber is largely and very intelligently marketed locally in the very prosperous state of Montana. The Great Northern milling interests, which are in the northern part of the state of Montana, were started to produce a smaller character of material, such as could be produced from that kind of material for railroad use—ties, and things of that kind.

I told you that we had two members of our Association at Yakima. Our timber does not extend from Spokane to Yakima. They got a little factory plank that goes into Wisconsin, the same as ours does, and the rest of their timber is mostly sold locally. Our timber does not extend from Spokane down to the eastern corner of Oregon. The Walla Walla wheat fields come in there. There is a big wheat field in the southeastern part of the State of Washington, and there is a large timber area in northern Idaho. Northern

Idaho is pretty nearly all timber. The most of the acerage in the eastern part of the state of Washington east of the Columbia river is agricultural and does not have much timber.

(Thereupon the witness marked the map with blue pencil, indicating the Spokane timber district. Continuing his testimony he stated):

That covers the timber section of Washington. With some exceptions it is generally true that directly west of the blue line on the Washington map is wheat, until you come to the foothills of the Cascade Mountains. I would have to post up a little about that, but generally speaking, the top of the Rocky Mountains takes in the timber district. There is a little timber just east of the Rocky Mountains, but not to speak of. We compete with the Big Black Foot Company's mills. They have the same general class of timber that we have. They are located at Bonner, which is right close to Idaho, and at Hamilton, Montana, which is right close to the Idaho line. Their headquarters is at Missoula. The president of the company lives at Missoula.

The timber practically goes to the top of the Rocky Mountains. In Oregon it is in Union, Wallowa and Baker counties. It does not extend all over that whole territory. Just along the side of the Blue Mountains. The timber grows only on the Blue Mountains, and the rest is wheat. Union is largely a wheat county. The timber that has been exploited is largely in the Blue Mountains and Powder River Mountains in three counties of northeastern Oregon. The timber that is purchased for Boise, Idaho, is shipped by the Oregon Short Line, but most of that is used locally, except on a very few specialties.

The Short Line runs through a sage brush country in which there is no timber at all accessible to the line. That is pretty generally true except from Boise, Idaho. They have to log that down the river in order to bring it to Boise, but it comes down without much trouble. At Boise there is one of the modern mills.

I could not tell you how much they sell out of that country, they sell quite a good deal. I don't know how many feet. I am not absolutely certain about my statement. I do know that they sell their factory plank, and anything that can be cut into that character of stuff they market in the same territory that we do. They have got such an excellent market at Boise in that wealthy central Idaho country, that they would

be foolish to attempt to market their product away from home.

For quite a distance west of the Blue Mountains it is a sage brush country and an agricultural district. The big timber country of Oregon is west of the central portion of the state. There is quite a timber district in the state of Oregon in almost the central part of the state, that has no railroads and is inaccessible at this time, but finally, as we know, it will find transportation to San Francisco. Perhaps I am mistaken about the central part of the state, but north of the center. What I am thinking about is timber from the Deschuttes River, west of the Cascades. The central part of the state of Oregon, north to the state of Washington and all that district from the foot of the Cascades to the northeastern corner, is generally spoken of as an agricultural country. There is a treeless country there, I think.

(The maps referred to were thereupon offered in evidence by the defendants, page 286, and marked "Ufford Exhibits Nos. 3-6.)

Some of the lumber they produce at Bonner is of the same quality as that of Yakima. They produce the same kind of lumber at Bonner as they do at our place, but there is more fir in the Yakima timber than there is in ours. That fir is a very much poorer quality than that on the western slope. They sell it for home use in Yakima to go into boxes. They have large box factories.

Eliminating the Yakima and Leavenworth stuff, all of the rest, the Bonner and ours, and the Wallowa County stuff is all of the same general character. I don't think they have any white pine down in Baker, Wallowa and Union Counties. They have a larger percentage of western pine and a less percentage of mixed woods than we do. The pine that they have as compared with the total cut could be larger than ours. I don't know how many mills there are from Yakima to Boise. I think the George Palmer Lumber Company does business at LaGrand, Michigan (?). The Grand Ronde Lumber Company is in the same territory. The Shockley & McMurray Lumber Company, Goodenow Mercantile & Stock Company, the Western & Oregon Lumber Company, and the Empire Lumber Company are all in the same general territory. The Summerville Lumber Company is a new name to me; I do not remember it.

I think the freight rates from the Baker City territory to the east generally are about five cents less than ours, to the

Nebraska territory, though they did not go into the B. M. & R. district. They get into Nebraska by the Union Pacific. They have a rate which I think is five cents less than ours to the same territory. It was five cents under the old rate. I think under the new rate it is seven cents less than ours.

All of this Union and Baker county territory in Oregon enjoys either a five or seven cent less rate to the east and the Nebraska territory than we do. I think it is still higher to the Chicago territory. There is a still greater differential.

The Bonner rates are included in what has been termed the Montana and Oregon rates, which are from five to seven cents less than ours in the same general territory for the same class of stuff. We only had that better rate in the eastern part of North Dakota. We had no better rate than anybody else into Nebraska. We had the same rate into the state of Nebraska generally by the Union Pacific and by the B. M. & R. Road, via Spokane as all the other mills in the Spokane district. We attempt to compete with Bonner when Bonner has a seven cent differential over us. We can compete, and there is a reason why we can. The reason is that Bonner has a most excellent home market in which they are able to get rid of most of their stuff. When they get outside of that home market, into the Nebraska territory generally, they do it in a most intelligent way. They know how to get a good price for their stuff. While we may not get as much at our home mills as they do, we are not hurt so badly by them as we would be by less intelligent marketers.

I don't think that the Bonner differential of seven cents less than ours is fair. I certain do not, but I do not think it hurts from some people as much as it would from others.

I have said that the timber on the eastern slope of the Cascade Mountains, where these little mills operate is largely owned by two concerns, one at Leavenworth and the other at Yakima, and most of their product is used locally. I don't know how much timber those two concerns own.

There is not so much timber on the eastern slope of the Cascade Mountains. I do not mean to say that the eastern slope is a treeless country, but it is not timbered to the extent that ours is. The Deschuttes River Company is the principal mill in that country. There is no railroad in there, and there is nobody to make a complaint either way. He is talking of the Deschuttes River country.

Take the whole eastern slope of the Cascade Mountains, I don't mean to say there is no timber there, but it is not tim-

bered to the extent that the western slope is. I said that our country was not timbered to the extent that the western slope is. The timber on the eastern slope is nearly of the same general class as exists on the western slope.

The timber of the Hood River territory is more nearly like the timber that exists on the eastern slope of the Cascade Mountains. When you get that far and farther you are getting toward the clear pine belt. The eastern slope of the Cascade Mountains is not nearly the wooded and timbered country to the extent that the western slope is, but it is of the same general character of timber as the western slope.

I have been speaking for the district in the Inland Empire lumber manufacturing district, where we manufacture our product in the same general territory. They do not market their product in the same general territory as we do, and are not so interested in what the rate is. The people there use their timber at home and make it into fruit boxes. The mills there are not so small, they own quite a big chunk of timber in that country. They have had a differential in their favor, and we have not, and the Spokane district has none except in Nebraska. They have it in Nebraska.

I think, as a matter of real fact, that the territory I have been talking about, which manufactures the same general class of product which must be marketed outside in competition with the South and with the cheaper class of product from the extreme Coast, ought to have a different rate than the Coast.

I would have the boundary take in all the mills, generally speaking, in the Spokane district. That would have to be gone into by the traffic managers. Generally speaking, I would say to take in the territory from the top of the Rocky Mountains to Spokane, north to the British line, and south to take in the Baker City country, which you speak of; all of which lumber must be marketed in the same general territory, at the same general cost, and which is of the same general character. I would put the Baker City territory and from Spokane east to the top of the Rocky Mountains and Boise, Idaho, and north to the British line, in one differential class.

Yakima, Hood River and the eastern slope of the Cascade Mountains, are three hundred miles farther west than we are, and every one of them has got a home market. They all have a good local market and they can pay a higher freight rate than we can. The distances would warrant it. I do not think that enters into it very much—but their product also would warrant it.

Cross-Examination (By Intervenor).

I have lived in eastern Oregon and eastern Washington eighteen years. I have been up in Okanogan County, I have been in Gilliam County and in Douglas County. I have generally been through there, but it has been several years ago. There is an agricultural belt through there, and while there is a little timber in each one of these places there is not a mill in the district. I have not examined the report of the Government Forestry service as to the amount of timber that is in Okanogan County, but I have been all through that country and know which way the slope works and where the stuff has got to go. The timber in that region may be considered as largely of the same general character as ours. I don't know that there are a great many hundreds of millions of feet there. I would not dispute the Government report, if it says that. They have got an immense market there when they might get it opened up.

In Chelan the timber is of the same general character as the Leavenworth timber. Leavenworth is on the line of the Great Northern Railroad west of Wenatchee, on the east slope of the Cascade Mountains. It is almost an inaccessible region, regardless of what it may be. I would not say that the Government report is a mistake if it states that there are hundreds of millions of feet and billions of feet of standing timber there. I said it was an almost inaccessible region, regardless of what kind of timber it was. It is inaccessible to get it out by the lake if you cut it. I have been in that country. It is a timber country, mountainous and rough, an awful country, a beautiful country. The Kititas is a better country, the western part of it is timbered, but not to the extent that the western slope of the Cascades is. In the extreme western part of the country it is a heavier timbered country than Stevens County. The timber is mostly fir, more fir than anything else. I did not say it was a treeless country. I said that in the extreme western part of the county there is a lot of timber and that it is mostly fir.

I would not presume to put my judgment against the Government report, if it says that it is mostly pine.

Klickitat is largely a farming country, a beautiful farming country with a wonderful home market. There is timber in there.

I cannot tell you how many feet of timber I own. I own about thirty or forty thousand acres. I would call an ownership by one man of 350,000,000 feet of timber a particular

amount. I do not know the Klickitat Pine Lumber Company or that they own over 350,000,000 feet of pine lumber. I don't know where they are doing business or how they market their product. They could market a whole lot of it within two hundred miles of home.

We marketed last year, according to our report, over 50 per cent. of our product locally. We did not say in our report that it was a fact that this coming year was going to be such a wonderful year in production that the local demand was going to keep up with the consumption.

There are some very large mills in the Hood River country. I do not know where they market their product. They have fir and western pine. I guess they have a little clear pine. There is a little down here in southern Oregon.

This Hood River district product was not recognized by the manufacturers as the same lumber as they shipped from the Spokane district. It was not so if it was so recognized. I am willing to say that I do not know what the tariff was between these places, although I have a general knowledge of it there.

From Spokane, under the old tariff, we had a five cent differential into Missouri River country points.

Most certainly I do think that the section that differential ought to apply to is up here in Stevens County, this little piece down here, and this little piece down here (indicating), in Northwestern Oregon, irrespective of any of this other territory.

Shaw & Borden's list of prices is not a recognized list among us lumber manufacturers to fix a standard of prices. We just use it to tell the difference in value between the different grades of stock, as a basis to gauge from.

There are no joists, scantling and timber that comes in under that heading selling at all now in our district at any price. I answered that last year or any time when there is any moving, that that product sells at our mills from 50 cents to $1.00 lower than it does at the Coast mills. If we sold that same thing at the mill we would get from 50 cents to $1.00 less than the Coast man at the mills. Approximately the same thing would apply everywhere. I am absolutely sure of this as a general proposition. If we sell it delivered and if we sell it at the mill, there is the difference of the freight; we have got to pay the freight. We have got to meet the price of the other man and take what he will give us. We get from 50 cents to $1.00 less after we have paid the freight.

The same general thing would be true of common boards.

We have got some common boards, but very few of them, that bring a high price. It is all answered in the same general way, that we get less, as a whole, for our product in that territory that we have been talking about than the Coast does in their territory. We do not, as a matter of fact get more for our common boards than the Coast mills do for the same character of product. I do not think we get as much.

I think on ship lap for D. & M. we could get just about the same price. There is some of our product on which we get more than the Coast does, but we do not have but little of it. We do not get as much for rough fencing as the Coast does. The items I have gone over constitute the largest part by far of our products.

What I said was that for the same thing, we would get from 50 cents to $1.00 less on a thousand feet in the market, grade for grade, than the Coast receives. For the whole thing, it will be from two to two and a half less

There is a farming country around Spokane. We raise wheat, vegetables, fruits, cattle. From the Coast comes canned goods. We are on the eastern edge of this farming country. It is nearly south and west of us. There is not so much wheat fields near by Spokane. The big wheat area is west and south of us. It extends from 175 miles to 200 miles. Leaving Spokane we first get into wheat in about twenty-five miles. We have a lot of big flour mills in Spokane. They ship wheat there, but not so much as they do to the coast.

Re-direct Examination.

There is no railroad transportation north of the Great Northern Railroad crossing the northern part of the state of Washington, other than the Spokane Falls & Northern, and its branches.

The real value of stumpage depends upon the accessability, or non-accessability of the timber at a given time and upon its proximity to water or rail. There is a considerable territory of timber on what is known as the Payette River in southern Idaho, which will be transported over the O. R. & N., and the Oregon Short Line. There is an immense lot of timber that has to go to the Union Pacific.

The mill at Boise is one of the good ones and one of the large ones. I don't remember just the capacity.

The reason we can compete in wide boards with the Minnesota market is because they don't have any, and I caught a

man who wanted some badly. The mill I speak of is the Potlatch mill. It has a capacity of 35,000 feet an hour. That is the maximum, you know. It was built three years ago. The first mill in the district was built only about five years ago. There has been a more rapid growth and development of the whole country than in eastern Oregon, within three years, but there has been a rapid increase there, and there is a reason for it.

Counsel for complainants thereupon offered certain bills of lading, showing weights of lumber from Idaho to Washington points, where were marked "Exhibit Ufford No. 8." (Record, page 313.)

Also further bills of lading marked "Exhibit Ufford No. 9." (Record, page 314.)

Also other bills of lading marked "Exhibit Ufford No. 10." (Record, page 314.)

Also certain statements of the Potlatch Lumber Company, showing total shipments made by them, by feet and weight, marked "Exhibit Ufford No. 11." (Record, page 315.)

Also statement from the Palouse Mill, marked "Exhibit Ufford No. 12." (Record, page 316.)

Counsel for the complainants thereupon offered certain exhibits from the McGoldrick Lumber Company, showing freight shipments into North Dakota, weights per car, amounts of old rate, and new rate, and distances those shipments actually went. These statements were thereupon marked "Exhibit McGoldrick No. 1." (Record, page 322.)

Counsel for complainants thereupon offered exhibit in regard to Humbird Lumber Company, showing shipments in North Dakota, South Dakota, Nebraska, and also shipments east of the Minnesota transfer. That was marked "Exhibit McGoldrick No. 2." (Record, page 323.)

EVIDENCE FOR DEFENDANTS.

W. G. JOHNSON, for defendants, testified (Record, page 324):

I am Assistant Comptroller of the Northern Pacific Railway Company.

JOHNSON EXHIBIT "A"

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING TONS, TON MILES AND NORTHERN PACIFIC REVENUE ON LUMBER AND SHINGLE SHIPMENTS FROM OREGON AND WASHINGTON TO POINTS NAMED, FOR YEAR ENDING JUNE 30, 1906.

	Tons	Ton Miles	N. P. Revenue	Rate per ton mile in cents
To points via Billings	388,994	393,496,799	$1,911,615.66	0.486
To points in Eastern Montana, Dakota, and beyond, and to points in Minnesota	156,482	251,172,339	1,257,078.77	0.500
To T. C. Terminals, Duluth and points beyond	572,245	1,120,426,859	4,889,845.52	0.436
Total	1,117,721	1,765,095,997	$8,058,539.95	0.457

Office of Auditor Freight Receipts St. Paul, Minn., Feb. 19, 1908.

This statement (referring to "Johnson Exhibit A" introduced and received in evidence. Potlatch record, page 325) shows the number of tons moved; tons one mile, and Northern Pacific revenue—the average rate per ton per mile—on shipments of lumber and shingles from Oregon and Washington points, for the fiscal year ended June 30, 1906, divided into three pieces: To points via Billings, on which the average rate per ton mile was 4.86 mills; to points in eastern Montana, Dakota and beyond and to points in Minnesota, comprising principally the shipments to local points on the Northern Pacific, on which the company received an average of 5 mills per ton mile; and business passing through Twin City terminals, Duluth and points beyond, on which the company received an average of 4.36 mills per ton mile. That statement was prepared under my direction, and is correct so far as I know.

Cross-Examination.

I do not include the shipments from Idaho and Montana. These are shipments from Washington and Oregon, under tariffs involved in the Pacific Coast case, principally of coast lumber. If the average haul of lumber from Idaho, in and around Spokane, was not to exceed 1,200 miles, and the rate was the old rate, we would naturally get a higher rate per ton per mile, somewhat higher. For a distance of 1,200 miles on a 40 cent rate, it would figure 6-2/3 mills per ton per mile.

Our auditor of freight receipts prepared a statement which included everything east of the apex of the Cascade mountains. This statement, Exhibit A, was also prepared in the office of the auditor of freight receipts. This statement was prepared February 19, 1908. It was an enlargement of the statement furnished for the other case.

D. H. McMULLEN, for defendants, testified (Record, page 331):

I am a wholesale lumberman and live at Minneapolis. I have lived there off and on since 1895. I have never been in any other business since I was ten years old than the lumber business. I was brought up on the Saginaw river in Michigan, where my father was a lumberman. I remained there until I was 22 or 23 years old. The lumber industry was of a very extensive character in that section, white pine and Norway.

Then I went to Marinette, Wisconsin, and stayed there eight years. White pine and Norway was the character of the lumber manufactured there. During that time I went to Texas, practically a year, investing in southern timber lands on behalf of others. They were Hon. Isaac Stephenson, now United States Senator from Wisconsin, ex-Senator Sawyer, now dead, a man named Speese, a rich lumberman, and a whole crowd of those people. They invested $70,000 or $80,000; and bought up the land so fast that Congress withdrew the lands from the market. The buying was fast at $1.25 an acre. The timber bought there was short and long leaf yellow pine. These investifiations and purchases were in Texas and Louisiana. The long leaf pine is a little softer wood. By looking at it, it is hard to tell the difference. The bark of the two looks alike, but with the long leaf the needles are longer. The short leaf makes the better flooring, inside finish, and is a little harder.

These purchases in Louisiana and Texas were made on my report. Shortly after that I had to close up a big estate in northern Michigan, and then I went to the Pacific Coast. I went into the lumber business there, with a partner. We ran a lumber mill until the panic of 1893, when lumber dropped so low in price we had to quit. I then went to work for the Atlas Lumber & Shingle Company, of Seattle, and represented them in the east, selling lumber. That, I understand, is one of the parties to the Pacific Coast case, the Pacific Coast Lumber Manufacturers' Association. I worked for them five years as salesman, and sales manager in the United States. They manufacture principally fir. Then the St. Paul & Tacoma Lumber Company hired me. That company is located at Tacoma, Washington, Everett G. Griggs is now president of it. He is President of the Pacific Coast Lumber Manufacturers' Association. That mill produces more than any other mill in the State of Washington. I was assistant to the second vice-president, who was general manager. I was assistant general manager, and had charge of everything under Mr. Griggs. In some cases we bought logs. I superintended the logging operations and directed the sales of the manufactured product in the United States and foreign. I was with that concern five years, acting in the capacity of assistant to the second vice-president, two years. I then left and went into business for myself at Minneapolis. That is a wholesale and commission business, representing four large mills. I have been in Minneapolis more or less for 12 years, since 1895. About eight or ten years ago I traveled in the so-called Spo-

kane district, all over that territory, selling lumber, after I had been in the same territory investigating the resources for pine, looking over some tracts with a view to purchasing. I do not remember how many times during those years I have been there. When I was with the St. Paul and Tacoma Lumber Company, they had retail yards in Washington, and bought some of this Washington pine. Those purchases were made under my direction.

Since I have been in Minneapolis in the wholesale and brokerage lumber business, I have sold fir, all Pacific Coast products and eastern Washington products. Since the first of the year I commenced to represent a concern in St. Louis and I have dealt in yellow pine. One day last year I took a 183-car order for coast fir and eastern Washington pine. At another time I took an order for 107 cars. It has been a pretty big business. I have confined my territory principally to the west, including Wisconsin, Iowa, North and South Dakota, and Minnesota, some Nebraska.

In the general common run of lumber, we have probably 20 per cent. of uppers, and 80 per cent. of common. Common lumber consists of principally dimension, some board, some shiplap, flooring and drop siding. The great majority of fir is used for house building purposes. I hear a great deal of talk about lumber, and there is a misconception by the general public as to what lumber is used for. Take the whole volume of our lumber business, and I think fully 80 per cent. goes into building houses. During the last two years there has been more or less lumber sold to railroads. I know that about ten per cent. of the Pacific Coast lumber goes into Pacific lumber business, which is astonishing when you hear so much talk about the big railroad purchases. We have sold western pine in South Dakota, Minnesota and North Dakota, the common grade of western pine. I do not speak of the upper grades much in western pine, because it is only confusing and amounts to such a little thing, not seven per cent., and I do not take it into account when speaking of western pine in conversation. It is practically common lumber. That lumber is sold principally in North and South Dakota and the western part of Minnesota, the northwestern corner of Minnesota. Eighty per cent. of the manufacturers manufacture the same kind of goods from fir as from western pine. The only difference is in sizes. They make more boards from western pine than from fir. They get more money than they could if they put them into dimensions. Some of our northern

white pine mills do the same thing. The reason why there is more fir manufactured in dimensions than in boards is that they cannot sell their fir boards in competition with any other wood we know of. The fir board is a hard board that splits easy, and is pretty knotty, and carpenters are so prejudiced against it they would walk around the block before walking near one.

The Western pine saws a great deal easier than fir. It is easier for the mill to saw up pine than fir logs. White pine logs can be sawed cheaper than oak logs. Our fir timber is between the two. Our carriages have got to move slower. In feeding our band saws with white pine it goes through like chain lightning, and it takes a cracker-jack to sit on the carriage. The western pine of Washington and Idaho is hardly as hard as the Norway of Minnesota, and it is not quite as soft as the soft pine of Minnesota. The white pine of Washington and Idaho is just about the same as the white pine of Minnesota. We sell coast fir and western pine on the price lists which have been adopted by this association out there. We all use the same price lists. They are prepared by committees appointed for that purpose. The inside of each price list is exactly the same. The only difference in the covers is in the name, depending on the mill or firm that sends it out to the trade. The prices named in these price lists aim to represent the market price of the various kinds of lumber. For the last two years up to December 31st we have made our sales absolutely on each printed price list. We had no authority to cut them, and I sold a great many hundred cars on them. That is true both as to fir and western pine. We used the weights contained in the price lists absolutely to determine the price on any railroad, on request,—in case anybody asks us for the delivery price. I originated those weights on the Pacific Coast, in 1893, I think it was. Those weights are reasonably accurate on both fir and western pine. There is no more variation from the actual weight in one than in the other.

The price list referred to was marked "McMullen Exhibit No. 1," and was offered and received in evidence. (Potlatch Record, page 345.)

That price list represents the current market price on the items described therein and the weights on which lumber of this character was sold up to December 31, 1907. The same is true of Shaw & Borden's current price list which you show me, as regards the items described therein, as it is in respect to the other.

Shaw & Borden's price list was introduced and received in evidence and marked "McMullen Exhibit No. 2." (Potlatch Record, 345.)

Minneapolis is one of the largest wholesale lumber markets in the United States, and probably in the world. All kinds of lumber are sold and bought there. Last year's business, taking the run of standing timber bought on the Pacific Coast, produced about 45 per cent. of dimensions stuff, about 10 per cent. of shiplap, about 15 per cent. of boards, about 20 per cent. of dressed and matched. The way the market was running it was about the most economical way to saw the ordinary run of logs. That adds up 90 per cent. There is a great deal of waste in sawing fir lumber, the band saws run so fast as to make a great deal of thin lumber and wedge-shaped lumber and leave a good deal of cull, so that the remaining ten per cent. would be made up of lumber not fit to ship by rail to any market outside of this vinicity. Of that 90 per cent. it would be about 70 per cent. common. I do not want to have this statement criticised afterwards, so that I want to say that I mean that statement to apply for 100,000,000 feet. I mean the whole locality, the entire state. In the manufacture of white pine, about 20 per cent. of dimension would be manufactured. It does not pay to manufacture western pine in the dimension, because they can get more money for it by putting it into boards. I would estimate about 25 per cent. of shiplap was produced last year on the average from western pine. Shiplap is manufactured from 1 by 8 boards principally, and from 1 by 10 to a large extent. That is, out of 8 or 10 inch stock in width; some 12 and 16, but usually out of 8 inch stock. There is a big demand for it. It is shiplapped on one side so that it fits over and makes a close joint. It is put on the outside of buildings and keeps the wind from going through and is used in building houses of all kinds. It is the old weather boarding. About 25 per cent. dressed and matched would ordinarily be manufactured out of western pine. That adds up 95 per cent. The rest I should judge to be cull, and also might include the waste we have. There is not so much cull in western pine as in fir, because we use the lower grades for different purposes. I agree with the statement made here yesterday that substantially 93 per cent. of western pine is common and about 7 per cent. upper.

In the ordinary manufacture and sale of fir, we would classify it as common. We do not segregate it into one, two and three common, but just sell it as common. We make only one grade

of shiplap, and only one grade of boards. Dressed and matched are divided into several grades. That runs into clear lumber; that is, with the fir, dressed and matched is clear lumber. The dressed and matched of the Minnesota people may be common. Of this 20 per cent. of dressed and matched which is manufactured from fir, it would be about an equal share of each grade. There are three grades, one, two, and three. Taking the western pine, they make a number two grade of dimension stuff. Year before last when times were good, we often shoved No. 2 dimension into No. 1 orders. We do not grade it close in practice. Shiplap manufactured from western pine would be divided into grades, No. 1, 2 and 3. I think they would run pretty nearly equal. There are Nos. 1, 2 and 3 grade of boards manufactured. That covers, I should say, practically 90 per cent. of the business. They do have Nos. 4 and 5, but No. 5 is dead cull, and No. 4 just live cull. When they get below No. 3 grade, it is not of much use; so that the ordinary run of timber would about equal in proportion, the No. 1, 2 and 3. Our matched and dressed from western pine would be divided in just about the same way.

Taking these percentages and these prices, the statement (McMullen Exhibit No. 3, Record page 353) fairly represents the result upon the prices shown by these price lists, showing that 1000 feet of fir delivered at Minneapolis, at the 50 cent rate, would be equivalent to $14.02 at the mill. The statement also shows that western pine delivered at Minneapolis at the 45 cent rate, taking the prices shown in these price lists, and the weights shown in these price lists, would net $19.56 at the mill. I think that fairly represents the result on these prices. That gives an advantage of $5.54 in favor of the western pine and nets us that much more than does our fir.

The statement referred to, being marked "McMullen Exhibit No. 3," is as follows (Potlatch Record, pages 353 and 354):

COMPARATIVE VALUE OF FIR AND WESTERN PINE.

Fir (delivered Mpls. at 50c cwt.).

Dimension.					Ave. Wgt.
2″ x 4″ 16 feet	45% Val.	$26.50	wgt. 2600	$11.92	1170
Ship Lap	10% Val.	27.00	wgt. 2500	2.70	250
Boards	15% Val.	27.50	wgt. 2500	4.13	375
Dressed and matched	20% Val.	31.25	wgt. 2000	6.25	400
	90% of Log			$25.00	2195 or 90%
	10% of Cull			10.98	50c. rate
				$14.02	$10.98 F. O. B. Mill.

Pine (delivered Minneapolis at 45c. cwt.)

Dimension.					Wgt.
2″ x 4″ x 16″	20%	$25.75	wgt. 2000	$ 5.15	400
Ship Laps	25%	29.25	1800	7.44	450
Boards	25%	29.75	2000	7.44	500
D. & M.	25%	30.50	1800	7.63	450
	95% of Log			$27.66	1800 or 95%
	5% Cull			8.10	45c.
				$19.56	$ 8.10

RECAPITULATION.

Fir, F. O. B. Mill	$14.02	Average weight	2439
Pine, F. O. B. Mill	19.56	Average weight	1895
	$ 5.54		544

1 Car of 25,000 ft. would be $138.50

25,000 ft. Car	
Pine at 1892 lbs.	47,300 lbs.
Fir at 2439 lbs.	60,975 lbs.

On another 5c differential Spokane would get 90c per thousand or $22.50 per car or $161.00 Per Car 2500 ft. more than 2500 car at cost.

Under old 40c basis from both, pine got $116 more.

I have checked up these weights recently with expense bills of freight shipments. They confirm the statement that the weights and price lists are relatively correct. During the last year there was no variation from these price lists. At the present time both the coast people, the fir people from the Pacific Coast, and the western pine people, are giving the same discount from these sheets, so that there is no relative difference as to the actual net amount at the mills.

Western white pine from the Spokane district goes anywhere if their freight rate is not too high. Of course they have to be governed by the prices made by Wisconsin and Minnesota on white pine. They cannot get any more money than that, but they go into the same territory. There are certain parts of the Inland Empire that have a great deal of white pine in them. For instance, the Potlatch purchase. That is south of Spokane. The timber commences south of Spokane about 70 miles, and then it extends in an easterly direction from that. There is a big chunk of it. The first edge of it you come to is not as good timber as it is further back into it. When you get back in it, it is the finest body of timber in Idaho, consisting of a great deal more white pine than has been shown by the evidence put in here. I should think 50 per cent. of the tract is white pine. The Musser Company does not cut any white pine at Spokane. It is practically all western pine.

Cross-Examination.

I am not interested in any timber lands anywhere. My examination of timber land has been entirely for other people. It was in 1889 that I went down into Texas and Louisiana to look over this timber land. I cruised that timber then. We invested about $70,000 to $80,000 at $1.25 an acre. We made a very careful estimate of it before we decided to take it at $1.25. We bought it in solid bodies. We bought it for A. C. Brown, of Marinette, Wisconsin, who was at that time the chief mover in this enterprise, Hon. Isaac Stephenson, and others who were interested. They manufactured no timber down there. It is still there. I am not sure but what the Brown boys started a mill two or three years ago.

I personally cruised that with the men I took down there with me. I absolutely did the cruising. These other men looked after the camp and cooked for me and so on. We were not looking for the best timber in the country. We were looking for an investment. Mr. Brown was looking for

something and hired me to estimate that timber for him. I knew of the Pacific Coast timber at that time and of the Idaho and eastern Washington timber. I went to the coast first in March, 1890, for myself, for the purpose of starting up in that country in the lumber business, in some manner or other, and also for the purpose of investing in some mines in Washington. When I went there in March, 1890, I did not stop off at Spokane and cruise this Idaho territory. I had no reason for doing so. I knew the general character of timber there, as men in that business find out about it. It did not look as good to me as the coast then, on account of the market at that time. There was no market for it at all. They were not shipping fir lumber this way at that time. There were 12 old mills on the coast, that had been there for thirty years, shipping foreign and down the coast. I went to Seattle and a friend of mine got me interested in renting a saw mill from some other parties, within four miles of Seattle. We operated that mill possibly six or eight months. We had to let it go because we could not make any money out of it. The market fell down, and we had to let it go back to the people we rented it from. We gave up the business. There was nothing in it. I bought no timber for myself, nor for anyone else. After I gave the business up I did nothing for a while. At the same time I owned a little electric light plant in a little town, and after I got cleaned out of that nicely, I entered the employ of the Atlas Lumber & Shingles Company. That was located on the Northern Pacific. The head office was at Seattle; the mills about 68 miles up the line, along between Seattle and Dayton. I remained in the employ of that company five years, selling lumber. I had charge of the selling only. I bought no timber for them. I was not a millionaire, to be able to enter into timber investments. I was looking for something easy. Timber investments were not attractive to anyone at that time, because yould not make any money out of the lumber business, because you could not sell lumber for any money if you cut it. You had no place to move it, no market. All I did was to sell lumber after I entered the employ of the Atlas people. That was all I did in connection with the business of that company. That did not take me into the woods to see their timber or logging, or anything of that kind. I was, however, the only practical lumberman attached to the concern, and the owners took me into the woods and asked me questions, asked for advice in all their operations, because there were none of them familiar with it.

When I went with them it was a bankrupt concern, and had about seven million feet of dimension. A fellow went in and cut, and had no sale or market for it. They wanted me to go down to San Francisco to try to sell it. I told them there was no use going down there; that I could do better east, and I did so. This lumber was fir and dimension. There is no southern yellow pine on the coast from the top of the Rocky mountains to the Pacific, no pine at all from the Cascade mountains to the Pacific. Once in a while there is a pine tree. We have them on exhibition. I think I know the character of the timber in the coast territory pretty well. Trees grow very high on the Pacific slope, I should say three hundred feet high; and I have seen them 12 feet in diameter. The average would be four feet. A good quarter section over on the Pacific Coast ought to average 50,000 feet to the acre, that is with the best and biggest timber in the State of Washington. There are not a great many sections that contain more than a quarter of a million feet to the section. Those trees that grow 300 feet high, would go up 200 feet on some special tree before you struck any limbs, but take the average of the timber and you would strike limbs as quickly as on any timber on earth. I have seen big, white pine so thick you could not walk through without chopping a path. I have no timber on the Pacific Coast myself and no interest in any company that has. After this five years of employment with the Atlas Company, I was hired by the St. Paul and Tacoma Lumber Company. I must have commenced with them in 1900. In the interim between March, 1890, and when I went with the Atlas Company, I was not doing anything, and when I went with the Tacoma Company I was assistant to the general manager. When the acting manager was not there I took his place entirely, and when he was there, I took it also, I guess. I had charge of the sales absolutely. I did not have charge of buying timber. To a certain extent I had charge of the logging. Most of our logging, except one camp, was done through contracts. The plant was located at Tacoma. I remained with that company five years, or thereabouts. When I left the Tacoma Company, I went to Portland, and then back to Minneapolis. I never manufactured in eastern Washington or northern Idaho, never operated a plant there at all of any kind. I think it was in 1902 that I went to look over the territory about Spokane. I went for myself especially at that time to investigate the purchase of timber lands. I did not buy because I did not think it was a good bargain. I have been there since at different

times. I traveled through that territory for the Atlas people. I was in there every month during five years, selling lumber. I established new yards for the Atlas Company in eastern Washington. I sold to yards already established. I established two or three yards for the Tacoma Company, all over eastern Washington. They had quite a lot of lumber yards in there, nine or ten when I left, and they still have, so far as I know.

It was somewhere about 1902 that I went down into this Potlatch territory. A fellow named Murphy, who represents a great deal of money, asked me if I could find anything. He said if I could, he would put up the money and buy. He asked me about this tract over there. I looked it over and I told him I did not consider it worth offering a cent of money for. There was 50 per cent. of white pine on it, but there was no market, and I did not know when we could find a market. There is no market right now to speak of. You cannot sell timber at the price list right now. There is no price in Minneapolis now for anything. You cannot sell anything. The price list at the present time means that my people don't let me cut it. Some are offering to cut it, offering to cut below, but they don't sell anything. My people will not let me cut. They say they are going to hang on until they see we will get our price.

I do not know the percentage of lumber that goes into the construction of boxes. My statement as to what goes into the construction of houses is an estimate. I know the general percentage of most any mill I have been connected with. Eighty per cent. of it about goes into yard stock. Yard stock does not include these large dimension timbers, and when I am talking about eighty per cent. in houses, I am excluding all that special sized stock lumber. White pine clear may have knots in it; white fir cannot have any knots in it. Yellow pine cannot have any knots in it in clear.

The lumber that has been shipped on my orders does not weigh any more than our estimated weights in our book. I represent the William Musser Manufacturing Company, of Spokane. I understand they own some saw mills up there that they ship lumber down to. The Musser Company are large manufacturers of boxes at Muscatine, Iowa, and also at Spokane.

I had very little to do with recent shipments from the Gray's Harbor country by the Musser Company. I merely took care of their shipments. They sent me the bills of lading, and I

had it reshipped. It was shipped east to go into sash and doors. That was spruce. That is about the same weight as the pine. I presume it was kiln dried. We could not ship it green. The only thing they would ship green at all would be heavy dimension. The coast ships nothing green at all, only dimension. Some of them ship short dimensions.

I do not remember how many cars of western pine I sold in 1906 nor in 1907. The proportion of western pine to our whole business was very small. I could not say what percentage. I do not buy western pine from anybody in the west and ship it to Minneapolis, and then ship it from Minneapolis. If I had an order for western pine, I would ship it direct to the place where it was to go. There is nobody else that I buy from besides the Musser Company. The records of the Musser Company would show the amount purchased from them by me in 1906 and 1907.

About 7 per cent. of the western pine is clear. When I refer to dimension stuff, I refer to two by four, two by six, and some two by twelve. Fir is a great deal harder wood than western pine. As to whether it is better or poorer for finish, and whether it brings a better price, it all depends on what it is intended to be used for. If you want to use it for dock timber where it is exposed to the wind and the rain, the best thing to use would be white pine; you could not use fir. Fir in that case would be a very poor article. If you want to make a desk like that (indicating), fir would be better. Yellow pine is so much like fir, it is difficult to tell the difference. Not one man out of five can tell yellow pine from fir board. Fir is largely used for flooring out in that local country. It is very largely used right in the Spokane territory for hardwood floors.

We did not make up this statement (McMullen Exhibit No. 3), but I checked it over with the lumberman who did make it. It was made from my knowledge of the business, and from price lists I was instructed to make prices on, from weights I was instructed to make the weights on; from the way the lumber runs, what it will cut out, and about what they do cut. That is not made from any experience as to the absolute manufacture in the Spokane territory, because I never have manufactured in that territory. I have no lumber yards of my own. I do simply a wholesale business and sell in the territories that I stated before that I sold in, that, is in the Dakotas. I do not sell any Minnesota product there. I sell fir and western pine in North and South Dakota. I sell in Nebraska,

but not as much as I used to. I have not done much business in the last two years, because we could not get the cars to do business with. I have not done anything to speak of in Nebraska in 1906 and 1907. I have done some business in Iowa. I shipped fir into Iowa; I do not know whether we shipped western pine or not.

I have sold western pine in Minnesota, not in Illinois. I have occasionally sold it farther east than Iowa. I have not gone east of late years with fir. I have gone as far as New York and sold fir. I deal just in fir, cedar, western pine, and yellow pine. The last wood I took on, in last January, 1908. That is yellow pine. The cedar is red cedar shingles; that is from the coast territory. Cedar does not compete with pine in any way.

Take the average cut of any one of the big mills on the Pacific Coast, we cannot cut over 60 per cent. as much as the C. A. Smith mill in Minneapolis or any big white pine mill. We do not cut any more fir and white pine. Yellow pine will cut as much solid wood as fir. The yellow pine of the west is like cutting butter. It cuts easier than fir,—the yellow pine of the south, and a very little worse than white pine.

I never operated a mill in western pine.

Re-direct Examination.

Of the several retail dealers I know, they all want soft wood, on dimension; as a matter of preference, on this dimension stuff, the majority prefer pine in preference to fir, grade for grade, and size for size, of the ordinary sizes they have use for. My experience shows me that the retailer and the farmer will pay five dollars more for our common pine board, grade for grade, than for the fir board in the markets I speak of, the same sizes and grades.

Taking a purchase from a mill, on a delivered price in Nebraska, or any place where I am doing business, the pine mill will net the most money on the board or on the dimension stuff, sold by the thousand, about $44 a thousand, or something like that. In addition to the price it gets the benefit of weight, and there is no question that a difference in weight does exist.

They do not ship any green pine lumber from Washington. Once in a while they get in some green to make the car weigh heavy. I have noticed probably one out of forty cars with green lumber in it.

I am familiar to a large extent with the character of tim-

ber on the east side of the Cascade mountains, in Washington and Oregon. Usually the character is about the same as the timber I have described in the Spokane district. In some spots there is more fir. I know of places over there where there is just as much white pine as in Idaho. I would consider the section I speak of to be a heavy timber section.

The effect of the advance in freight rates has been to set the line of demarcation about five hundred miles north. In other words, set it clear up to North and South Dakota. I have shipped yellow pine, since that rate went into effect, up and down the Grand Forks, in North Dakota.

Seventy-five per cent. of the manufacturers of yellow pine have dropped their prices. People will sell at a terrific loss to get some money for some purpose. Now, we have known prices made like that, which has made the market drop $6, $7 and $8. That is not the market. If you wanted to buy a million feet, you could not buy it. But some fellow has one, two, or ten cars, he has got to get some money, and he sells it at a terrific discount. I sold this yellow pine for Grand Forks, at Grand Rapids. I sold it right on the fir list. I think I sold it on a 52 cent rate, two cents above the old fir rate. That is from yellow pine territory. I did not have to cut the price. This is Grand Rapids, Minnesota, right east of Grand Forks, about 70 miles east. That is from 60 to 100 miles west of Duluth. It was sold on a 42 cent rate from the yellow pine territory, right on the list. The reason I started selling yellow pine was because I could not sell fir, and I wanted to pay office rent. This was short-leaf yellow pine. It was kiln-dried, the same as our own. It was flooring and ceiling, car bumpers, etc., high grade stuff. It was sold right on the list. I think I have a 42 cent rate on the list.

I sold fir for $41.00 a thousand feet, but there was a discount and that made it $38.50 per thousand. The sale was made this year at $38.50 per thousand on a 42 cent freight rate. The list weight per thousand feet is 2,000 pounds. These weights are pretty nearly right on all lumber. This sale did not realize $38.50 per thousand. There was a lot of other stuff in there, ceiling and other stuff nearer on a competitive basis with fir. I think the office has sold other cars besides this one right on this list. They do not allow them to sell off the list. We have a discount sheet which goes with that list. The discount on yellow pine flooring is $1.50 off from the list if I remember correctly.

The yellow pine people have lowered their price list about $4.00 per thousand feet. The freight rate remains the same. There has been practically no change in the freight rates at all in our territory from the yellow pine district. This cut of $4.00 a thousand feet took place January 2, 1908. On that date they dropped their price list $4.00 a thousand from the previous year practically. That is the list price. They sold under that price list afterwards $1.50 more on the same items, making a total drop of $5.50 a thousand, and no change in the freight rates at all. We do better than that on some other things. The drop which has taken place in yellow pine lumber is not due to any change in freight rates. I know something about the territory in Oregon, in Union and Baker County, by Baker City. I know about the character of the timber there. We used to call the lumber there "Mountain western." It is a great deal like Spokane pine. There is no white pine at Baker City but south of Baker City you get enough white pine. It is not being cut at all that I know of. I have been close to the timber on the Grand Run River. It is just as good lumber as ours or anybody else's for ordinary house purposes, which is 80 per cent. of the volume of the business. It is both yellow pine and western pine, like Spokane pine. It is not white pine. There is no difference between it and Spokane pine. There is a Boise tract of timber on the Oregon Short Line east of Huntington, about 60 miles north of Boise on a direct line. There is practically no timber on the Short Line east of Huntington, until you get to Boise. Then you have to go 60 miles north of Boise and bring the logs down to Boise. You have to go up the Payette River and bring the logs down. That is another tract of timber I looked over and refused. Others bought it afterwards. Going east on the Short Line there is another timber tract down through the Wyoming country, until where the Union Pacific crosses the Rocky Mountains. Boise and Baker City represent practically the end of the trees in the Union Pacific System to the east. Boise certainly does.

Southern Idaho is developing rapidly, perhaps more so than any other part of the West.

R. I. FARRINGTON (Record, page 403) testified:

I am second vice-president, in charge of the finance and accounting department of the Great Northern. I have been connected with that company for twenty years next August. I was auditor of disbursements from September, 1889, to May, 1894, assistant comptroller from May, 1894, to July, 1894, comptroller from July, 1894, to January, 1902; and second vice-president since.

All accounting offices have tried to see if they could not devise some means, method or formula for ascertaining the cost of doing freight business and the cost of doing passenger business separately, but they have never been able to get at an accurate or actual basis. There is no actual basis for dividing the cost of common items accurately between passenger and freight business. For instance, there is no known basis for dividing the cost of ties between passenger and freight business. If you adopt some arbitrary basis the whole result will be more or less arbitrary.

I have made an examination of the records of the Great Northern Company to ascertain the percentage of increased cost of conducting freight transportation in recent years. I have had some tables worked out to get the percentages of increased cost as accurately as the same could be ascertained. For the purpose of comparison I took the calendar year 1895, and the calendar year of 1900 and of the eleven months ending November 30, 1907. For the year 1895 I included the entire Great Northern System, the Great Northern Railroad and its proprietary companies. For 1900 and 1907 the entire system exclusive of the Great Northern's Mesaba Division.

The Mesaba Division of the Great Northern consists of about 320 miles in the northeast corner of the State of Minnesota, and the main line extends from Cass Lake, Minnesota, to the ore docks at Superior, Wisconsin, with branch lines running up to and on the Mesaba range. We cut that division out, because there is no lumber hauled over the line. The line has been built since 1895 to accommodate business which has developed entirely separate from the rest of the system. The purpose of the figures I have prepared, has been to compare the cost as near as it could be ascertained of conducting transportation in 1895 with the approximate cost of conducting it in 1900 and also for the eleven months of 1907, ended November 30, 1907.

Taking the year 1895 as 100 per cent., the cost per freight train mile for the calendar year 1900 was 143.82% of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course, in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as 100 per cent., the cost in 1900 was 126.19 and the cost in 1907 was 162.77. Consequently it cost nearly 63 per cent. more to haul a freight car one mile in 1907 than it did in 1895.

The method that was adopted for securing these figures, was as follows: I employed the method that was required by the Commission to be used in the reports that were made up to and including the report for the year ended June 30, 1893. Those requirements are found upon page 42, of the form for reports to the Commission, for the year ended June 30, 1893, and read as follows:

"For the apportionment of operating expenses between passenger and freight traffic the following instructions, prescribed by the Interstate Commerce Commission, should be followed: All expenses which are naturally chargeable to either passenger or freight traffic, should be entered in their respective columns. Expenses which are not naturally chargeable to either traffic should be apportioned on mileage basis, making the division as between passenger and freight traffic in the proportion that the passenger and freight train mileage bear to the total mileage of the trains earning revenue. This computation should be made from data furnished under train mileage, page 61. Loss and damage and injuries to persons should be apportioned to the train which occasioned the outlay, passenger or freight as the fact was. Mixed trains will be continued for the present as one-quarter passenger and three-quarters freight."

We followed those rules and divided operating expenses for the three periods mentioned between passenger and freight, under the rules of the Commission which I have just read. We apportioned to the freight those items which we could determine were clearly incurred on account of the freight service, and doing the same for the passenger service, and then dividing the common items upon the basis indicated by what you have read. I adopted identically the same method during each of the three periods. The object of using calendar years was to bring the cost down as near as possible to the date the new schedule of rates went into effect. That was one reason. The

second reason was so as to reflect for as long a period as possible some wage increases that went into effect last April and May. To have used the fiscal year for these statements would not have made them complete because the fiscal year ended June 30th, and there would have been but one or two months of the fiscal year that would include these wage increases in the figures.

The reason why I have given figures of percentages is because the figures showing cost would not be actual cost; they would simply be approximation, and they might be misunderstood, they might be considered as actual when they are not. They are approximations, and as approximations they can readily be compared. The percentages are fairly accurate and the percentages of increase based upon these approximate figures are as accurate as if the percentage of increase had been based upon absolutely accurate figures. That is, these percentages will represent, I think with great accuracy the increase in the actual cost if it could be ascertained.

Whatever errors are unavoidable in the figures for the year 1895, these same errors have been continued and adopted in order to preserve the same relation for 1900 and 1907. On that arbitrary basis, on that rule, excluding the Mesaba Division, the cost per freight train mile in 1895 was $1.19-98/100; in 1900 it was $1.72-56/100; in 1907 it was $2.41-24/100. The figures per car mile are found by dividing the total cost by the total miles of all freight cars; for 1895 the cost in cents was 4.62; for 1900, 5.83, for 1907, 7.52 cents.

The exclusion of the Mesaba Division has reduced the cost for 1900 and 1907 somewhat below what it should have been, for this reason: There were certain expenses—those that are grouped under the head of general expenses, such as general office expenses, salaries of clerks, advertising, and matters of that kind—which would have to be apportioned among the divisions on a basis of train mileage. It is purely arbitrary. Now all iron ore is handled on the Mesaba Division, with a very large train mileage. It necessarily follows that a large proportion of advertising expenses, salaries, and things of that kind, are charged to the Mesaba Division, when really there was no expense for it. We do not have to advertise iron ore, and the accounting for the iron ore traffic is the simplest thing we have. These common items were apportioned between the divisions first on a train mileage basis, and then the amount allotted to the Mesaba Division was de-

ducted. I presume if we had not added the Mesaba Division, our advertising and general office and clerks' expenses would have been exactly the same as they were. You see we have arbitrarily reduced the cost somewhat by excluding that division.

If the general expense could be accurately divided as between these different years these approximate cost figures would be somewhat higher. These figures show that the cost per freight train mileage has increased 101.07 per cent. over 1895. And the percentage of increase in cost per freight car mileage was 62.77 per cent. over 1895. The explanation of that difference in the respective increases per train mile as compared with car mileage is that by reducing grades and buying heavier and more powerful locomotives we are able to haul more cars in a train now than in 1895 or 1900. That accounts for the less rapid increase in the cost per car mile as compared with the increase in the cost per freight train mile.

I made some figures for loaded freight cars, but they do not mean anything. The results do not mean anything, but I will give you the results. The percentage of the cost of loaded freight cars to all cars is practically the percentage of loaded mileage to the total mileage, because the loaded cars would be affected by the empty car mileage. It is practically the same operating expense divided once by the mileage of loaded cars. Then divide the dividends the second time by the mileage of all cars. It is just like your car mileage. The difference between the apparent cost of moving loaded cars and the apparent cost of moving all cars would not in any sense reflect the cost of moving empty cars. This is the average cost of all freight cars loaded with all commodities from all parts of the entire Great Northern System exclusive of the Mesaba Division. It is on the basis of those figures that the relative increase in the expense of doing the freight business has been worked out. The increased cost has been brought about by increases in the cost of fuel, increases in the cost of all classes of material and supplies used on the railroad, increases in wages and the inefficiency of labor now as compared with what it was ten years ago. By inefficiency of labor, I mean that on account of the general prosperity and the great demand for all classes of labor in all classes of business, we have to put up with an inferior class of labor, and have had to take anybody we could get to do the work.

Secondly, the average amount of work has not been as high as it was during ten or twelve years ago. I refer to all classes of men. Labor conditions have been such that we have had to take anybody we could get to do the work.

Taxes have increased regularly. For the calendar year 1895, the taxes for the entire system were $618,489. For the calendar year of 1900 the taxes were $963,287, and for the 11 months of 1908 the taxes accruing were $2,006,184. The taxes in 1905 were 6.48 per cent. of the operating expenses for that year. The taxes for 1900 were 6.08 per cent. of the operating expenses for that year; the taxes for the eleven months of 1907 were 5.81 per cent. of the operating expenses of that period. The total taxes show a small decrease in percentage to the operating expenses; that is in total, not by units. Taking the percentages of taxes to operating expenses and applying them to the car cost for the three periods, I get the taxes per car mile, and subtracting the 1895 cost from the 1900 cost and the 1907 cost, I get the increase in taxes per car mile, and then of course the percentage of increase. The taxes per car mile for 1900 increased 18.39 per cent. over 1895 and the taxes per car mile for 1907 increased 46.15 per cent. over 1895.

We have done everything we possibly could in the way of making large expenditures to haul the traffic at the lowest possible cost. Take for instance, in 1893, when this rate was named, we had to haul lumber over the Cascade Mountains by a switchback. that zig-zagged back and forth over the summit of the mountains. We began shortly afterwards to build a tunnel through the mountains, over 2-1/2 miles long. It was finished and opened for operation December 20, 1900, at a cost of over two and one-half million dollars. And it was cheaper to run the train through the tunnel than over the top of the mountains. We go over the Cabinet Range of mountains which is pretty close to the Rockies, and in order to improve the crossing there we built a new line from Columbia Falls to Jennings, about 111-1/2 miles long, and cost us nearly seven millions of money, $6,910,000.

We crossed the Cabinet Range by the old line at an elevation of 4148 feet. The elevation for the new line is 3285 feet. There is practically a reduction in elevation of 860 feet. On the old line the grades were one and a half per cent., 79 feet per mile. On the new line the westbound grade is 1-1/4 of one per cent. That is practically 13 feet per mile. Eastbound the grade for a short distance is 7/11 of one per cent., say 36 feet. That is only a short up grade. The curvature of the

new line is 3-1/2 degrees and on the old line 10. The effect of the construction of the new line gave us a very marked increase in the number of cars per train after that new line was built. Each of these two enterprises, the construction of that tunnel and the building of the new line from Columbia Falls to Jennings had a marked influence toward the reduction of the cost of handling freight business over those portions of the line. I have only mentioned this new line from Columbia Falls to Jennings because it is a large item, but there have been many other line changes which have produced the same results, but none of such magnitude. A large portion of the line on the east side of the Rockies has been relocated and very materially improved. Large sums of money have been paid for line changes and grade reductions.

There was filed in the Pacific Coast case a table showing the amounts that had been appropriated to funds for improvements, and the statement filed in that case would cover the period from July 1, 1897, to June 30, 1907. There had been expended from the fund for improvements and renewals on the Great Northern road, in the way of improvements, $18,592,834.36. In addition to that the Manitoba Company, of which the Great Northern is the lessee, has expended from January 1, 1895, to February 30, 1907, for improvements on the same road, $3,952.000 or about that sum. There is a total expenditure of $22,600,000 for small additions and improvements to the road. This does not cover new mileage or new equipment. It is just simply for additions and improvements to the road itself. In addition to those improvements to the road, the Great Northern Company and its proprietory companies, expended for additional equipment from January 1, 1895, to November 30, 1907, $33,712,481.84. That does not include the cost of a single car or engine purchased in replacement; they are extra. This amount of money is the cost of additional equipment. Of course that additional equipment includes these more powerful locomotives, which would enable us to increase the number of cars per train.

In round numbers the aggregate amount of money that the Great Northern has expended for these purposes is a little over $56,000,000.

No part of this twenty-two million dollars expended for improvement on the part of the system leased from the Manitoba Company was expended on the Mesaba Division. This twenty-two million dollars was expended by the Great Northern Company for additions and improvements of the line proper. The money on the Manitoba Line was expended by

the Manitoba Company itself. The entire mileage embraced within the Mesaba Division was built, owned and operated until 1902 by the Eastern Railway Company of Minnesota.

These various expenditures also included the lengthening of passing tracks, and the adding of new passing tracks. A large proportion of that sum represents the extending and lengthening of all passing tracks and the building of new ones; the acquiring of new terminal yards and all matters of that kind. This reduction of grades and taking out of curves, has had a marked tendency toward the reduction of the item of expense known as helper mileage. The reports to the Commission call for the percentage of helper and revenue mileage at present. I do not know whether they did far enough back to give very much light on that subject, however. This increase in cost of freight car mileage has occurred in spite of all the expenditures that I have referred to, in spite of everything that we could do, in spite of all the money that we could expend intelligently and in spite of the best knowledge that we could get to operate the road; the cost per mile has increased during that period nearly 63 per cent.,—after we have done everything in the way of reducing grades, building tracks, buying equipment and everything we could do to keep the cost down.

In ascertaining the amount of the freight proportion, the total operating expenses include expenditures for taxes, for improvement and interest on the cost of the property used. The amount that was divided by the freight train mileage and the freight car mileage to get those average costs was simply the freight proportion of the operating expenses. Those operating expenses do not include taxes. They include no interest, they include no improvements, and they have included no depreciation of equipment except for four or five months under the present classification of the Commission. The operating expenses for practically the entire period are very closely in accord—of course they are absolutely so since the first of July—but previous to the first of July they are very closely in accord with the classification of operating expenses that the Commission put into effect the first of July of last year. Of course it is a generally recognized fact that if the cost remains the same as your density increases the cost per unit decreases. But these figures show that there has been an increase in cost per unit and they simply prove that the expenses have gone up in much greater ratio than the density has gone up. In other words, that the rule has operated in an opposite way from the ordinary oper-

ation of it. The ordinary operation is that if your rate and your cost remain the same and your expenses remain the same your cost per unit decreases with an increase in the number of units.

In the ascertainment of this percentage of 62.77 increase in the cost per car mile, that result appears after giving credit for the increase in density of traffic in the intervening year, because the density of traffic is reflected in the increased car miles.

Every possible effort has been made to keep the empty mileage down to the lowest possible point; and considering everything, I think we have succeeded pretty well in doing that. Since 1895, for instance, we have developed an entirely new line of business—the Mesaba ore business—iron ore from the Mesaba Range. That is practically an empty movement one way—very largely an empty movement.

The empty car movement on the Mesaba Division is west. The cars come from the Mesaba Range down to the docks on Lake Superior and then go back empty. The empty movement is westward.

I want to explain that we developed this new line of business, which resulted in an immense empty mileage. In addition to that there has been a large increase in the empty mileage westbound necessary to haul lumber. But in spite of those two increases, our percentage of empty mileage to the total mileage on the system now is substantially what it was in 1895. That is, taking the reports that were made to the Commission, the reports for all the roads of the system for the fiscal year ended June 30, 1907, it shows that the percentage of empty to total cars was 24.49. For the years 1895, when we did not have this Mesaba Division, and when we did not have to haul empties out to the coast to load with lumber, the percentage was 24.20.

Doing everything we could, using all possible skill and ingenuity to find loads for our cars has brought about the retaining of this percentage at about these same figures. We have done a great deal in the way of increasing the load of merchandise cars and matters of that kind.

Cross-Examination. (Record, p. 426.)

I cannot ascertain the cost per car mile. I gave an approximate cost. In 1895 the figures I gave were, I think, were 4.62 cents per car mile. In 1900 5.83 cents, and in 1907 7.52 cents. That was the approximate cost of moving all cars one mile.

I made the estimate on the entire system. We are operating now 6,600 miles. The calculation for 1895 was based on 4,337 miles, for 1900 on 4,986 miles, and for the eleven months of 1907 the calculation was based on 5,297 miles.

The distance is 1,830 miles approximatedy from Seattle to St. Paul. These figures are based upon the total mileage for the entire system. If you want to find out the approximate cost of any movement you multiply that 7.52 cents by the number of miles. This is all together. It is the average of all kinds. I would not know how to get at the difference in the cost of moving different kinds of freight. I have absolutely no way of getting at it accurately, the cost of movement of any particular commodity.

We send statements to the division superintendents. They are gotten out under my supervision. We give an approximation of the cost of moving freight on the different divisions. I used some of those figures in making this statement, that is, I used the total operating expenses that were shown by those statements. I used nothing else except the total operating expenses and the total car mileage. I used all the figures of operating expenses that are on those statements, and I included in those statements all the things that I have included in this statement. I have no copies of those reports to the division superintendents with me here. I have them in St. Paul. They relate to both passenger and freight business. We do not segregate in these statements local and through freight. It is generally considered that it costs more to move local freight than it does through freight. It is generally recognized that local freight costs more to handle than through freight. It would be impossible to make up any statement of the interstate business and make an estimate on the interstate business. I cannot get at the cost of handling any class of commodity or particular kind of freight. It is handled in the same train, over the same rails, and over the same ties and bridges, so that a commodity may be carried at a comparatively low rate, and yet may be really making more money than the local rate which is higher.

There are several reports made to the Commission, for the component parts of the Great Northern System. The Great Northern, and the Willmar and Sioux Falls, and the Montana Central, and the Watertown and Pacific. They are all operated separately, but since the first of July they have been operated by the Great Northern, and are now consolidated with it. The annual reports made by the Great Northern to the Commission do not include those separately oper-

ated lines. The annual reports made to the stockholders showed both figures.

The annual reports show first, the table for the system as a whole; then there is a table dividing those results between the different companies forming the system; and then there is the revenue account of the Great Northern Railway proper, which does not include the subsidiaries. Each separate road show the earnings just the same as the main line. That is the way in all of them.

Beginning with the first of July, the reports to the Commission would include everything in the case of the Great Northern road. The gross earnings have increased very largely from 1895 to 1907. They have increased very, very greatly. The cost of movement, the cost of transportation has increased very little on account of the congested condition of the traffic. There has been congestion only on one portion of the line and during a limited time. I do not know about the conditions on the Northern Pacific.

Some of the expenses of the Cascade tunnel were paid for from earnings. The proceeds of the bonds that were issued to build the Pacific extension, including the tunnel, did not equal by some six million dollars the cost of the extension, and we had to charge the balance of six million dollars, as well as some few hundred thousand dollars we took out of earnings, off to profit and loss. The statement that has already been filed in the Coast case shows that there was already appropriated out of the surplus to the fund for the construction of the Cascade tunnel, $1,950,000. That did not quite pay for it. We have spent eighteen million dollars for betterments and permanent improvements since 1895, from earnings, besides the ordinary maintenance which with us is restricted to straight maintenance. I mean by that, it does not include improvements.

The Northern Pacific and Great Northern are paying for the Portland & Seattle Road, but both companies made quite large issues of capital stock a little while ago in order to get the funds to make payments of that kind.

They have not advanced any out of their net earnings for the construction of the Portland-Seattle road. They might have made some advances out of their treasury before the proceeds came in for their stock. How much, I don't know; possibly two or three million dollars may have been temporarily loaned.

I help make up the annual reports. I cannot say how the Great Northern's surplus is invested. The balance sheet shows

on one side the surplus and the liabilities, and on the other side the assets. You cannot take any dollar of assets and say that that one dollar came out of the surplus, or that it came out of the bonds, or that it came out of the stock; and there is not any human being that can do it. Our bookkkeeping shows the balance of profit and loss account which is what you call surplus. That is absolutely accurate or your books would not balance.

Further Cross-Examination.

Personally I had nothing to do with these reports showing these increases in expenses. I have charge of the accounting department, and told them what to make up. I know they are just as correct as the ordinary clerks can make a statement. The account of the operating expenses would vary with the difference in opinion in different individuals, as to whether one item should go into operating expenses or not, but our plan, or organization has been ever since I have been in control of the accounting department, that nothing can be included in either betterments or in the way of new work, anything that has got to be specially authorized, nothing of that kind can be charged to any account, either operating expenses or improvements, without my initialing the account when it comes down to me. I have pursued the same policy from 1895 to 1907, as to what should be put into that expense account.

If our report shows that large sums of money that have been expended for betterments and improvements have been put in the operating expenses account, and a very much larger sum has been put in in the last five years than in the first five years, it would show a corresponding increase in this report. I think you refer to the letter press in the report where it states, each year, the amount of extraordinary work that has been charged to operating expenses. I simply want to say that if that is what you are referring to, there is not a single dollar of the amount but what is absolutely and properly an operating expense, and can be so considered under the present operating expense classification of the commission. We have appropriated each year for betterments, replacements and equipment charges as our ability would allow us to do, and they have been larger than for the previous five years. The amounts that have been appropriated from our revenue account to the funds have been used in making improvements. They are not in the operating expenses. The statement in report of operating expenses, of deductions from

income, "permanent improvements," "$2,000,000," means that we took out of our surplus, what you call our surplus earnings that year, or out of our revenue, $2,000,000, and appropriated it for improvements and renewals to be made later on. When we appropriate $2,900,000 the same year, that means that in that year we would charge against our income account depreciation on the equipment, which the Commission now states shall be charged in our operating expenses each year. We had not charged it to our operating expenses before July 1st, but for two years had charged it to income, and now we charge it in our operating expenses. All the roads have the same system. I meant to say that we charged depreciation two years ago and stated it out of our income as a separate item, and that is one of the items referred to. A large portion of the improvements have been paid out of what you call the operating income. I call it the appropriations that have been made from the revenue to pay for those things. It has been paid out of the gross rate.

I never made and could not make any statement showing the cost of handling one class of business as compared with another class. I don't think I have ever made any statement comparing the cost of handling less than carload with carload business. To do it would be simply on the basis of an opinion, you might say. An accountant could get at the cost of handling a car, and if that car contained 20,000 pounds or 40,000 pounds of freight, there would be the cost per hundredweight of that. And if the car happened to be loaded with three or four, or five or six thousand pounds of merchandise, and it would cost the same to haul the car, there would be the cost of handling less than carload freight. They might get at it in that way.

I have been with the Great Northern twenty years in August. I am, in a general way, familiar with some of the suits against it in Minnesota, but not with those in other states. I know something of the suits affecting the local distributing rates out of St. Paul last year. I was up there at the trial. I should think that probably any figures given by the Northern Pacific, whatever they showed as to the less than carload and local business as against through business, would be pretty near correct for the portion of the line they were made up for, and for the class of business they handled, etc. I do not know whether we are handling our business for less or more than the Northern Pacific.

These figures here are only approximations at best. The

percentage of operating expenses to gross earnings is actual. Our percentage of actual operating expenses as returned to the Commission shows a large increase. I think the figures that you have show an increase of something over 10 per cent. in the ratio of operating expense to gross earnings. Our percentage of operating expenses to earnings in 1900 was 52.87 per cent. I cannot give the Commission any idea what it costs per ton per mile for us to move freight on our road. That is no unit that amounts to anything. You cannot use that because you cannot take and roll a ton out by itself. The unit of cost on a railroad is a train. The only subdivision you can make of that cost is the car. You cannot move a single passenger by himself unless you give him a tie pass, and you can not move a single ton. You have got to load the ton into the car and the smallest unit you can get is a car, and the real unit is the train. I think the percentage of increased cost has been relatively the same in passenger business as in freight business.

This iron ore that we are now moving is moved in large quantities. That does not make a very heavy westbound movement empty, because the average distance hauled from the mine to the docks is 115 miles. We have been hauling quite a number of cars back and forth; but including all that we have been able to keep our empty mileage down to what it was a number of years ago. I think the mileage ought to be still lower, and it would be if we did not have to haul empty cars to the coast. We have larger cars now than we had before. The increase in the revenue and the increase of loading cars from the figures I have made up on Coast lumber, would be about three to five per cent. on lumber from the Coast. I have simply used coast lumber because I knew it was heavier than other lumber, and I thought if the figures were fair for that lumber they would be here. Taking the rate the same that would mean that the loading since this rate went into effect has increased from three to five per cent. per car, and the revenue from the car has increased from three to five per cent. I have the number of cars of fir lumber received from points west of Leavenworth to the Minnesota Transfer during the year, received at the track only, because I thought that would be an average, and I did not take the haul of that business, because it would be an interminable job, and would cost too much money. We have that in our records. I took it for the year 1895 and the year 1900. I just took the years 1895 and 1900, those two periods, in order to compare with the third period

that had already been in the record, to see whether there had been any material increase in the loading per car of lumber. I have no record of the year 1906 and 1907 showing the income received from cars of lumber from the Pacific Coast over the Great Northern to Minnesota Transfer as against 1893. Nobody has prepared or asked me to prepare that. I had them go through the lumber received at the track for Minnesota Transfer; I had them start and pick out every car that was loaded, that the abstract showed was loaded with fir lumber from a point west of Leavenworth, and they put that down and added it up, and divided it by the number of cars. They did not draw off the earnings, Mr. Teal; and it showed that the average loading in 1895 was 47,242 pounds.

For 1900 there was a similar calculation made, but in 1900 it showed less. That is the reason I did not speak of it. The average for 1905 was 45,205 pounds. I think there must have been some peculiar conditions to account for that. I had these figures gotten up in pencil form about ten days ago. These figures are already in for 1907. I did not include 1906, because I was trying to compare the increase in loading for the same years that I had compared the increase in operating cost. The 1907 figures were already in the record in the other case. I understand there was a table filed in the Pacific Coast cast that gave the average weight of carloads of lumber for August, 1907; and we have had so much work to do in gettinfi out all the statements that have been required in all these cases that we did not do any more of it than was absolutely necessary, and as long as I could avoid working up a figure for 1907, having it in the record, I did so.

For 1895, the average carload was 47,242 pounds. In 1900, 45,205 pounds. My memorandum here is that the average weight shown upon the exhibit I referred to was 48,668 pounds for 1907. That is on the Great Northern. That does not include shingles, it is simply lumber. The statement covers simply shipments west of Leavenworth. Mr. Maguire's statement is Leavenworth and west.

For the last six to ten years the Great Northern has been paying a dividend of 7 per cent., and it has created some funds. We have not saved them, we have spent them. We appropriated the money and spent it. We have bettered the road, and that is the reason we have been able to haul the stuff at the rates that we have been able to do it. We have been able to do it at those rates by spending this money for improvements. It would not have been fair to have used operating expense figures for 1893 or 1894, because we would

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have had the low rates of wages that were made right after the collapse of 1893, and which were partially restored in 1894. So I took the calendar year 1895 as being the first complete year; and you want to consider that the expenses were very low in 1895. The increase in wages that I have been talking about has been a general condition of all lines of business. I think the percentage has been a little higher possibly in the case of railroads than anywhere else, in other classes of business. Common labor has dropped considerably since the panic struck us in the latter part of 1907, but the railroads require comparatively little common labor in the winter, because of climatic conditions you cannot do much work. You do not have very many men, you do not have any extra gang men; we have got comparatively few section men in the winter. You will get a better class of labor, as there are fewer jobs. A man will work harder to hold his job. The chances of a man working for less do not seem quite as good as they were some time ago.

Re-direct Examination.

The figures I have prepared and from which this percentage of increase has been shown, were prepared in my office, under my direction, and by our regular office force, by men who have been in the employ of our company for a considerable period of time and in whom I have full confidence. The results are correct, and the computations and everything are as correct as it is possible for the ordinary clerks to make them. These various appropriations for improvements and betterments have not entered into our calculation showing this percentage of increased cost. But the percentage of increased cost was shown by dividing the operating expense by the mileage figures. These figures that Mr. Teal has paraded before us have nothing to do with the factors which made this result of the increased percentage. This western lumber comes over the mountainous portions of the line. The relative cost per car that I have stated is the average of all the carloads, approximately speaking, on the whole line. My judgment would be that it would cost more to haul a car through from the coast than the average of the entire system. The average cost is a cost brought down by the greater number of cars that are moved in the east. The cars going back and forth between the Twin Cities and the wheat fields.

Every car from the coast has to pass over what used to be

three but what I will call now two and a half mountain ranges. You cannot haul as long a train over the Cascade Mountains as you can haul in Montana or in Dakota. It naturally costs more to haul your car over the Cascade Mountains and to haul it over the Cabinets and over the Rockies than it does on the prairies. Taking all those things into consideration, taking the fact that this lumber passes through the most congested portion of the road, as Mr. Stevens referred to in his questions—that is, the section between Larimore and Devil's Lake, where we had a lot of stuff poured on from branch lines—and considering the fact that the lumber has to use expensive terminals at the eastern end, and that there is considerable expense connected with connecting it up and gathering it up at the western end, I honestly believe that the lumber cost is somewhat above the average cost of all the freight.

I do not believe that the cost of moving lumber from the Pacific Coast from west of the Cascades would be considerably more than it would from the Spokane territory. I think it would cost more to haul that lumber from Spokane than from the coast on account of the greater amount of empty car mileage that is required. You know the business on the coast is greater than it is at Spokane, and that it is a merchandise business. The loaded business going out of the coast, then, is greater than the loaded business going to Spokane; and you know that they want on the coast every single car they can get, or they did want it before this trouble came on, every single car they can get to load back with lumber; and you know that we have got to have cars. If we have no empty cars, we ought to haul them out of Spokane to load with wheat at Harrington and other places, and they would go through to the coast, and they would be loaded back with lumber from the coast. Now, the only way we can supply the Spokane mills, or the mills of the Spokane district, with cars to load back lumber, seems to be by hauling them out empty; and the more the business increases, the more empty cars we have got to haul all the way.

I think you will find that several hundred empty cars start from St. Paul to the Pacific coast or Spokane for lumber. Neither the old rate or the present rate, the coast rate nor the Spokane rate are sufficient to cover the empty movement out and the loaded movement back. Consequently, in order to get cars to load out here on the coast and bring them back on what was the forty cent rate, and is now the fifty cent rate, we have got to load them as far west as we can.

The rate was predicated on a loaded mileage out, all the way out, because when the rate was made in 1893, we had loads all the way out, and we had to haul the empties back, and we wanted to avoid that.

The percentage of empty cars to loaded cars for the entire system is 24 per cent. On the lumber business, as near as we can figure it out, it is between 40 and 45 per cent. If you go to work and get the empty cars that go west through the Cascade tunnel, to load with lumber, you will get some information that would be of some good. I cannot give you any statement of the Great Northern as to tonnage delivered in Idaho and eastern Washington; I cannot tell you absolutely what the empty haul is, without knowing that. I can simply tell from my judgment, based on the reports I see from day to day. I can simply base it on my judgment. I have no tables which will show the figures, and I could not get any without going to our conductor's car-wheel reports, and I have not done that, or tried to do it. I would not have had time to do it if I had been requested. I know of no other calculation being made in regard to the cost per mile and per car and per ton on any other basis than the one I have stated there. I know that this same basis, although it was not reduced to figures per car, was used by the Pennsylvania Railroad in their two-cent fare case in Pennsylvania, which they carried up to the Supreme Court of that state, and I know that the lower court of Pennsylvania approved the use of this train-mile basis for dividing the common expenses, based on the same data that we have here. That is the only basis that I know of. While it is not accurate, it is the only one I know about using. It is the only one I could suggest to get approximations. The statement of the expenses of the different divisions for the moving of freight that we send to the division superintendents is different from this statement. You see, there is a whole lot more of it that is not in this statement. I am glad you asked me that, because I want to explain that. Mr. Stevens referred to that statement. It does not mean anything, because you take every single account that is not absolutely local to the division, and then pro-rate it between the divisions on arbitrary percentages or train mileage or something of that kind. Now, that statement is gotten up simply to incite rivalry between the different division superintendents, and in order that we may get the best possible results and the lowest possible cost. If there is anybody that is benefited by our getting up and sending out statements of that

kind, it has been the shippers; because by getting those statements, by having our division superintendents, you might say, "scrapping" between each other to see which could make the better showing for the division, it has produced a better result in reducing the entire cost, and enabled us to handle our business at reduced rates right straight along.

On the comparative basis it has reduced the cost. I do not know it has reduced the cost as a money result. If we know the total amount we spend and we have our train mileage or our car mileage for a divisor, and you divided that into your money, and your cost per unit is more, you know that your cost has increased in the aggregate. There is absolutely no way in which you can arrive at what it costs you to transport one train, one ton, one car or one passenger. You cannot get at it actually in any way. You can approximate it with a fair degree of accuracy; and, by making the approximations for a definite period and using the same basis, the percentage relation of those figures is an accurate one.

J. B. BAIRD, a witness produced on behalf of the defendants, (Record page 498), testified:

I am general freight agent of the Northern Pacific, with headquarters at St. Paul.

Comparing the old with the new rate, at the principal basing points, that is Omaha, Kansas City, Denver, St. Louis, St. Paul and Chicago; under the old basis of rates, the differential, under the old rate, in favor of Spokane, was 5 cents. Under the new basis, there is the same differential. As Kansas City, Spokane had no differential under the former tariff, and under the present tariff have a differential of five cents. To Denver, Spokane had no differential under the former tariff, and under the present tariff it has a differential of five cents.

To St. Louis, Spokane had no differential under the former tariff, and under the present it has a five-cent differential.

To St. Paul, Spokane had no differential under the former tariff, but under the present tariff it is five cents.

To Chicago Spokane had no differential under the former tariff, but under the present tariff it is five cents.

That is the comparison of Spokane with the coast rate.

A comparison of the former rates from Spokane, and what are known as the Montana and Oregon rates, would show the following:

To Omaha, Montana and Oregon had a five cent differential, and under the present tariff their differential is 7 cents.

To Kansas City, Montana had a differential of ten cents, and under the present tariff, it is 7 cents.

To Denver, Montana had a differential of five cents, and under the present tariff it is five cents.

To St. Louis, Montana had a differential of 3 cents, and under the present tariff it is 2½ cents.

To St. Paul, Montana had no differential, and under the present tariff they have a 2-cent differential.

To Chicago, Montana had no differential, and under the present tariff it is 2 cents.

When I say Montana, I mean the Montana-Oregon district. That district would take in Baker City and points in the Blue Mountains of Oregon, and it would take in points on the Northern Pacific, Hamilton, Missoula and Bonner, which, I believe, are the only mills in that district.

Cross-Examination.

There was a slight movement of lumber from the Spokane district into the Kansas territroy. That bases on the Kansas City rate. It was not a heavy movement. The Oregon rate, as compared to the Spokane rate under the old tariff, was more favorable for Spokane, 3 cents a hundred. The old rate to Montana points on the Northern Pacific was 40 cents, and into the Spokane territory it was 50 cents. That is over the Northern Pacific to Kansas City. The old rate was 40 cents and the new rate is 50 cents. Under the old tariff the rate from Spokane to Kansas City was 50 cents, and from eastern Montana points on the Northern Pacific. Taking it through North Dakota and South Dakota, I would say probably there were more rates advanced 5 cents than 10 cents. The advances run higher in South Dakota than they do in North Dakota. I think as to some of the mills immediately east of Spokane, the advance has been a little higher than the advance at Spokane. The largest volume of the movement of lumber over our line from the Spokane district was from Sand Point to Coeur d'Alene. To some points those were more than 5 cent advances. Sand Point and the Minnesota Transfer was advanced 5 cents a hundred. Coeur d'Alene, 5 cents a hundred. I have been giving simply the base points. There is a large movement in North Dakota, and the advance has been greater in some cases than it has to the Minnesota Transfer. In North Dakota I should say the advance would run from 3 cents to 7 cents.

J. P. McGOLDRICK, a witness produced on behalf of the Oregon Lumber Manufacturers' Association, (Record page 515), testified:

I am connected with the McGoldrick Lumber Company; I am its president. The list which you show me is a classification of prices as to different widths and grades of lumber, and it is a guide. We have no average discount from the list. That list did not represent the prices when it was issued. We figure on mills at Spokane, and sometimes lose business when we figure four or five or six dollars less than the list. We are not selling lumber on that list, because we are not getting that price. We are not trying to sell. We are only selling about one car of lumber every two days. It depends on the character of the lumber. We couldn't sell lumber at that list, or anywhere near it. This list was issued January 4, 1908. It represents a standard to go by, but we are not selling on that price.

Cross-Examination.

We meet legitimate competition, regardless of the list, if we desire to sell lumber.

A. C. DIXON, a witness produced on behalf of the Oregon Lumber Association (Record page 518), testified:

I am in the milling business in the State of Oregon, in the Willamette Valley. We operate all rail mills, exclusively. Our mill sells quite largely in Colorado and to a considerabe extent in Nebraska, and also Utah. We come into competition with white pine or western pine, rather, in Idaho, Colorado, in the southwestern portion of Wyoming, and to some extent in Nebraska, although we do not sell heavily there.

The mills in the southern portion of what has been defined here as the Inland Empire territory have a differential to Salt Lake. The effect there has been, so far as our mill is concerned, that we are absolutely unable, and have been for the last several years, to sell any inch common lumber, either rough, surfaced on one side, shiplap or dressed and matched in the Utah territory; and that same thing is true of Colorado

and such portions of Wyoming and Nebraska as we come into competition with the western pine. Our materials are what the western pine people denominate as piece stuff and what we call dimension, and our sales in these same territories have been restricted. We have been on a strictly competitive basis with western pine. For instance, with reference to inch material, concerning which I said we had been entirely closed out of these markets by pine, a pine board of the same size and width and the same quality as to the number of knots, the number of pitch pockets, and blisters and other defects sells for more money in these markets than does the fir and is preferred to such an extent that they don't sell fir, as I have stated in those sizes and grades. Take a ten-cent differential from what is termed the Spokane territory into the Denver territory, and in inch stuff, dimension stuff and small piece stuff, we could not sell against the pine, nor could we sell siding against pine.

Cross-Examination.

There is no movement in lumber now from Spokane, by the O. R. & N. that I know of. I have seen western pine in Colorado from the Inland Empire. Under the old tariff the mills in the Baker City and La Grande district had a differential to Colorado and Nebraska and Utah, and that is the reason we have not been able to sell any inch stuff in there.

Re-direct Examination.

We have never been able to sell inch common lumber in Salt Lake territory to any appreciable extent. The market for inch common lumber has been supplied with pine, so far as my knowledge goes, with the exception of some hemlock. Very largely western pine from the territory known as the Inland Empire. Some of it came from Baker City, but whether any of it came from Spokane or not, I do not know. Under the old tariff the differential from Baker City to Utah and Colorado, was 10 cents.

Speaking for my own mills, we don't sell in the Dakotas, and I might say that we do not sell in Idaho. The competition that they have from fir does not come from the mills on the Southern Pacific, in Oregon. I know from our manufacturers, but not personally, of the competition between Wash-

ington fir and western white pine in Dakota. We have four mills in Lake County near Eugene, averaging about 130 miles south of Portland on the Southern Pacific. It is 130 miles to Portland, and I don't just remember the distances to Baker City or La Grande from our mills. I should judge it is four or five hundred miles. A 10-cent differential from Baker City will make a bad matter worse. Where we did sell considerable piece stuff and small dimension in Utah, and Nebraska and Colorado, we would naturally sell less, unless we could absorb the differential.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1911.

No. 452.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 30, 1910.

(22424)

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1 United States of America. In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

Pleas before the honorable the judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division, of the June, A. D. 1910, term of said court, held in said district, in the year of our Lord one thousand nine hundred and ten (1910).

DISTRICT OF MINNESOTA.

Be it remembered that on the 1st day of October, A. D. 1908, came the complainants by their solicitors and counsel and filed in the clerk's office of said court their bill of complaint, which is omitted from this return in view of the subsequent filing of an amended bill of complaint.

And thereupon, upon application of said solicitors, a writ of subpœna was duly issued out of said court and under the seal thereof duly vested, and in the words and figures following, to wit:

2 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL. *vs.* INTERSTATE COMMERCE COMMISSION.	

Præcipe for chancery subpœna.

To the clerk of the above-named court:

Please issue chancery subpœna directed to the above-named defendant returnable November rules, 1908.

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Solicitors for Complnts.

(Indorsed:) United States Circuit Court, District of Minnesota, Third Division. Northern Pacific Ry. Co. et al. vs. Interstate Com-

merce Commission. Præcipe for chancery subpœna. Order ent. C. R. "C," page 8. Filed October 1st, 1908. Henry D. Lang, clerk.

3 United States Circuit Court, District of Minnesota, Third Division.

Chancery common rule and order book.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } Equity No. 884.

1910. Oct. 1st.

The complainants herein having filed a bill in equity in this cause, on application of F. C. Dillard, James B. Kerr, and Hale Holden, solicitors for said complainants, it is hereby ordered that a chancery subpœna issue as therein prayed.

(Entered C. R. "C," page 8.)

4 (Original.)

United States of America, District of Minnesota, Third Division.

The President of the United States of America:

To The Interstate Commerce Commission, greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of November next, at the city of St. Paul, then and there to answer the bill of complaint of Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, citizens of the States of Minnesota, Wisconsin, Illinois, Utah, Oregon, and Kentucky, filed against you on the 1st day of October A. D. 1910; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the 1st day of October, 1910.

Issued at my office in the city of St. Paul under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL OF COURT.] HENRY D. LANG, *Clerk.*

Memorandum: The above named defendant to enter its appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk.*

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Complainants' Solicitors.

(Endorsed:) Chancery subpœna, returnable November Rules, 1908. Served copy of within writ on within named defendant by service on E. A. Moseley, its secretary. Oct. 3, 1908. Aulick Palmer, U. S. Marshal Dist. of Columbia.

5 Thereafter and on the 12th day of October the following Appearance was filed by the defendant and the order following entered thereon, to wit:

6 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RY. CO. ET AL. *vs.* INTERSTATE COMMERCE COMMISSION. } No. 884.

Appearance.

The clerk will enter my appearance for the defendant in above entitled case.

LUTHER M. WALTER.

(Indorsed:) United States Circuit Court, District of Minnesota, 3rd Division. Northern Pacific Ry. Co. et al. vs Interstate Commerce Commission. Appearance of Luther M. Walter for deft. Entd. C. R. "C" p. 142.

Filed October 12th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

7 United States Circuit Court. District of Minnesota, Third Division.

Chancery rule and order book.

NORTHERN PACIFIC RAILWAY CO. ET AL. *vs.* INTERSTATE COMMERCE COMMISSION. } No. 884. Equity.

Oct. 12.

This day comes the defendant by Luther M. Walter, solicitor, on whose motion it is hereby ordered that the appearance of said defendant be, and the same is hereby, entered.

(Entered C. R. "C." page 140.)

Thereafter and on October 16th, 1908, the following certificate of the Attorney General was filed in said cause, to wit:

8 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
v.
THE INTERSTATE COMMERCE COMMISSION.

To the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the Northern Pacific Railway Company et al. against the Interstate Commerce Commission, under the act of Congress entitled "An act to regulate commerce," as amended by the act of June 29, 1906, and that said suit is in my opinion a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted," approved February 11, 1903; and in further compliance with the provisions contained in section 16 of the "Act to regulate commerce," approved June 29, 1906, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Eighth Circuit, to the end that said case shall be given precedence over other cases in said court, and will be assigned for hearing at the earliest practicable date before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney General.

WASHINGTON, D. C., *October 13, 1908.*

9 (Endorsed:) Certificate of the Attorney General under the acts of February 11th, 1903, and June 29th, 1906. Filed October 16th, 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following certificate of H. D. Lang, clerk, was filed in said cause, to wit:

10 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

UNITED STATES OF AMERICA, *District of Minnesota.* } ss.

I, Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that on the 16th day of October, A. D. 1908, I personally handed to and left with the Honorable Walter H. Sanborn, one of the United States circuit judges for the Eighth Circuit, at St. Paul, Minnesota, a duly certified copy of the certificate of the Attorney General, under the acts of February 11th, 1903, and June 29th, 1906, this day filed in the above entitled cause, and that on the same day I mailed a certified copy to the Honorable Willis Van Devanter, by enclosing a copy thereof in an envelope addressed to him at Cheyenne, Wyoming, and depositing the same in the post office at St. Paul, Minnesota, and that on the same day I also mailed a duly certified copy of said certificate to the Honorable Elmer B. Adams, by enclosing the same in an envelope addressed to him at St. Louis, Missouri, and depositing the same in the post office at St. Paul, Minnesota, and that on the same day I also mailed a duly certified copy of said certificate to the Honorable William C. Hook, by enclosing the same in an envelope addressed to him at Leavenworth, Kansas, and depositing the same in the post office at said St. Paul, Minnesota.

In witness whereof I have hereunto set my hand and official seal this 16th day of October, A. D. 1908.

HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of Henry D. Lang, clerk of delivery of Attorney General's certificate to U. S. circuit judges. Filed October 16th, 1908. Henry D. Lang, clerk.

11 Thereafter and on October 16th, 22nd, and 27th, the following receipts of the U. S. circuit judges of the Attorney General's certificate were filed in said cause, to wit:

12 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

Received of Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, a certified copy of the

certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29th, 1906, filed in the above entitled cause October 16th, 1908.

Dated October 16th, 1908.

WALTER H. SANBORN, *Circuit Judge.*

(Endorsed:) Receipt of Hon. Walter H. Sanborn for Attorney General's certificate. Filed October 16th, 1908. Henry D. Lang, clerk.

13 United States Circuit Court of Appeals, Eighth Circuit.

Hon. David J. Brewer, circuit justice, Washington D. C. Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. Willis Van Devanter, Cheyenne, Wyo.; Hon William C. Hook, Leavenworth, Kan.; Hon. Elmer B. Adams, St. Louis, Mo., circuit judges.

ST. LOUIS, Mo., *Oct. 20, 1908.*

HENRY D. LANG, Esq.,
Clerk United States Circuit Court,
St. Paul, Minnesota.

DEAR SIR: I beg to acknowledge receipt of your letter of October 16th, with enclosures. I see no occasion for accepting service in the manner suggested by some of your enclosures as if the proceeding were a suit against the judges individually.

Very respectfully, yours, ELMER B. ADAMS.

(Endorsed:) Receipt of Judge Elmer B. Adams for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

14 ST. LOUIS, MISSOURI, *October 19, 1908.*

Mr. HENRY D. LANG,
Clerk, St. Paul, Minnesota.

DEAR SIR: I am in receipt of yours of the 16th inst. enclosing copies of the certificates of the Attorney General in the three cases, Union Pacific Railroad Co., Northern Pacific Railway Co., and Great Northern Railway Co., against the Interstate Commerce Commission, Nos. 883, 884, and 885, in the Circuit Court for the Minnesota District.

Very truly, WILLIAM C. HOOK.

(Endorsed:) Receipt of Judge Wm. C. Hook, for Attorney General's certificate, filed October 22nd, 1908. Henry D. Lang, clerk.

15 ST. PAUL, *October 16th, 1908.*

Hon. WILLIS VAN DEVANTER,
U. S. Circuit Judge, Cheyenne, Wyo.

MY DEAR JUDGE: I hand you herewith a certified copy of the certificate of the Attorney General of the United States of America

under the acts of February 11, 1903, and June 29, 1906, filed to-day in each of the cases of 883, equity, Union Pacific Rd. Co. et al. vs. Interstate Commerce Commission; 884, equity, Northern Pacific Railway Co. et al. vs. Interstate Commerce Commission; and 885, equity Great Northern Railway Co. et al. vs. Interstate Commerce Commission, together with a receipt for each, which kindly sign and return to me.

Yours, very truly, HENRY D. LANG, *Clerk.*

Dictated.

ST. PAUL, *Oct. 28, 1908.*

The above enclosures were received by me to-day, the same having been forwarded from Cheyenne.

WILLIS VAN DEVANTER.

(Endorsed:) Receipt of Judge Van Devanter for certificate of Attorney General. Filed October 27th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

16 Thereafter and on October 20th, 1908, the following amended bill was filed in said cause, to wit:

17 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, complainants. *v.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity. No. 884.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States, within and for the District of Minnesota:

Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin, Great Northern Railway Company, a corporation organized under the laws of the
18 State of Minnesota, Chicago, Burlington & Quincy Railroad Company, a corporation organized under the laws of the State of Illinois, Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah, and Oregon Railroad and Navigation Company, a corporation organized under the laws of the State of Oregon, bring this,

their amended bill, against the Interstate Commerce Commission, established and existing under and by virtue of an act of the Congress of the United States.

And thereupon your orators complain and say:

I. That the Northern Pacific Railway Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin; that the Great Northern Railway Company is a corporation duly organized and existing under the laws of the State of Minnesota; that the Chicago, Burlington and Quincy Railroad Company is a corporation duly organized and existing under the laws of the State of Illinois; that the Union Pacific Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Short Line Railroad Company is a corporation duly organized and existing under the laws of the State of Utah, and that the Oregon Railroad and Navigation Company is a corporation duly organized and existing under the laws of the State of Oregon; that the defendant, the Interstate Commerce Commission,
19 has been created and established, and during all the times herein mentioned has existed, under and by virtue of an act of the Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof.

Your orators further show that the Northern Pacific Railway Company has its principal operating office in the city of St. Paul, in the district of Minnesota, third division thereof.

II. Your orators further show that the Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company are each common carriers, engaged in the transportation of property by railroad, by continuous carriage or shipment, from points in the State of Washington to points in the States of Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Iowa, Missouri, Kansas, Nebraska, Utah, and Colorado, and have been so engaged for many years past, and a large proportion of the property so transported by your orators is and has been lumber, shingles, and other forest products produced at points in the State of Washington. That for the purpose of transporting the lumber, shingles and other forest products so produced in the State of Washington to points of consumption in the States above named, your orators have established and maintained through routes and joint rates over their lines and the lines of connecting railways from said points in the State of Washington to destinations in said other States.

20 III. The rates for the transportation of lumber, shingles, and forest products from points in the State of Washington over the lines of your orators' railways to points thereon in the States above mentioned and to points in said States and other States over lines of connecting railways, which rates were in effect on October 31,

1907, and which had been in effect for a long time before that date, were prescribed in certain tariffs duly filed, published and posted under the provisions of the act entitled "An act to regulate commerce." These tariffs are known and described as follows: S. R. 662, I. C. C. No. 564; G. N. G. F. O. 9838, I. C. C. No. A–1101; G. N. G. F. O. 13051, I. C. C. No. A–1427; G. N. G. F. O. 17526, I. C. C. No. A–2231; G. N. G. F. O. 18025, I. C. C. No. A–2427; G. N. G. F. O. 18837, I. C. C. No. A–2661; Northern Pacific No. 23275, I. C. C. No. A–3095; and Northern Pacific No. 20285, I. C. C. No. B–479, and are too voluminous to be set out in this amended bill of complaint, but true copies thereof have been filed with the original bill of complaint in this cause, and reference thereto is hereby prayed as if the same were made a part of this amended bill of complaint, the said tariffs being marked respectively, Exhibits 1 to 8, inclusive.

IV. That more than thirty days previous to November 1, 1907, your orators, together with a large number of other carriers, filed, published, and posted, in accordance with the provisions of that certain act of Congress, entitled "An act to regulate commerce,"
21 approved February 4, 1887, and the acts amendatory thereof, a certain tariff known as "Transcontinental Freight Bureau East-bound Special Tariff No. S. R. 963, I. C. C. No. 850," with supplements 1 and 2, which became effective November 1, 1907, wherein rates were prescribed for the transportation of lumber, shingles, and forest products from points in the State of Washington to points in North Dakota, South Dakota, Montana, Minnesota, Wisconsin, Iowa, Illinois, Missouri, Nebraska, Arkansas, Louisiana, Texas, Oklahoma, New Mexico, Colorado, Kansas, Utah, and Wyoming, and at or about the same time your orator, Great Northern Railway Company, filed, published, and posted, under the provisions of said act of Congress, a certain local and joint tariff known as "Great Northern I. C. C. No. A–2667," which prescribed the rates for the transportation of lumber, shingles and forest products from points in the State of Washington to points in Oregon, Washington, Idaho, Montana, Alberta, and British Columbia, which said tariff and the rates therein prescribed, became effective on November 1, 1907. And at or about the same time your orator, Northern Pacific Railway Company, filed, published, and posted a certain local and joint tariff prescribing rates for the transportation of lumber, shingles, and forest products from points in the State of Washington to points in Idaho, Montana, and North Dakota, which rates became effective on November 2, 1907, said tariff being I. C. C. No. A–3432.

That said tariffs above described are too voluminous to be set out in this amended bill of complaint; that true copies thereof have been filed with the original bill of complaint in this cause, and reference thereto is hereby prayed, as if the same were made a part of
22 this amended bill of complaint, the said tariff I. C. C. No. 850 being marked "Exhibit 9," the said tariff I. C. C. No. A–2667

being marked "Exhibit 10," and the said tariff I. C. C. No. A-3432 being marked "Exhibit 11."

That in and by said tariffs so filed, published, and posted the articles or commodities therein described were designated as groups A, B, C, and D, and by the terms thereof group A comprised shingles; group B comprised lumber, poles, piling, and timbers of cedar of single car lengths and certain articles manufactured from cedar; group C comprised lumber, poles, piling, and timbers of fir, hemlock, larch, pine, and spruce of single car lengths and certain articles manufactured therefrom; and group D comprised long timbers, poles, piling, or lumber requiring two or more cars for transportation.

V. That the rates named in said tariffs so filed, published, and posted thereupon became, were, and are the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all of the points in the State of Washington named in said tariffs to each and all of the points of destination in said other States named in said tariffs, and said rates, and each and all of them, were, on November 1, 1907, ever since have been and now are low for the service rendered and by comparison with other rates, and as such neither unreasonable nor unjust, and, as your orators verily believe, will continue so to be for the period of two years from October 15, 1908.

23 VI. That as soon as the said rates prescribed by the tariffs above mentioned became effective, two certain proceedings were commenced before the Interstate Commerce Commission, one entitled "Pacific Coast Lumber Manufacturers' Association and others v. Northern Pacific Railway Company and others," being cause No. 1329 before said commission, and the other entitled "Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company and others," being cause No. 1335. In said cause No. 1329, the Pacific Coast Lumber Manufacturers' Association and others complained against your orators and other carriers parties to said tariffs, and in cause No. 1335, the Southwest Washington Lumber Manufacturers' Association complained against your orators and other carriers, parties to said tariffs, and the complainants in both of said causes alleged that they were engaged in the manufacture and interstate shipment and sale of lumber, shingles, and other forest products from points within to points without the State of Washington, the rates on which were fixed by said tariffs, and alleged that the rates fixed therein for the transportation of such commodities were unreasonable and unjust. Upon the filing of the complaints in said two causes, the defendant Interstate Commerce Commission required your orators and the other carriers named as defendants in said proceedings to answer the complaints of said complainants, and thereupon answers were duly filed by your orators, and upon the issues raised therein evidence was produced before the said

24 Interstate Commerce Commission by such complainants and by your orators, and the matters in difference in said two causes were submitted to the commission on March 20, 1908.

VII. Thereafter, and on June 2, 1908, the defendant Interstate Commerce Commission entered an order in said cause No. 1329 and in said cause No. 1335, which order was in words and figures as follows:

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908. Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1329.

Pacific Coast Lumber Manufacturers' Association, St. Paul & Tacoma Lumber Company, Atlas Lumber & Shingle Company, Page Lumber Company, Day Lumber Company, White River Lumber Company, Three Lakes Lumber Company, Wallace Lumber & Manufacturing Company, Grays Harbor Commercial Company, Tacoma Mill Company, Northwestern Lumber Company, Mel-
25 rose Cedar Shingle Company, Shingle Mills Bureau, J. H. Cavanaugh, and W. R. Burke.

v.

Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Chicago & Northwestern Railway Company; Chicago Great Western Railway Company; Minneapolis & St. Louis Railroad Company; Wisconsin Central Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Bellingham Bay & British Columbia Railroad Company; Columbia and Puget Sound Railroad Company; Port Townsend Southern Railroad Company; and Tacoma Eastern Railroad Company.

No. 1335.

Southwest Washington Lumber Manufacturers' Association

v.

Northern Pacific Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; and Oregon Railroad & Navigation Company.

These cases being at issue upon complaint and answers on
26 file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made

and filed a report containing its conclusions thereon, to which report reference is hereby made:

It is ordered, That the said defendants, the Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Chicago & Northwestern Railway Company; Chicago Great Western Railway Company; Minneapolis & St. Louis Railroad Company; Wisconsin Central Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Bellingham Bay & British Columbia Railroad Company; Columbia & Puget Sound Railroad Company; Port Townsend Southern Railroad Company; and Tacoma Eastern Railroad Company, and each of them, be, and they are hereby, notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present rates on interestate shipments of lumber, shingles, and other forest products, from points of origin in Oregon, Washington, Idaho, Montana, and British Columbia to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al., decided June 2, 1908.

It is further ordered, That said defendants, and each of them, be, and they are hereby notified and required to establish and put in force on or before the said 15th day of August, 1908, and
27 maintain in force thereafter during a period of not less than two years, rates on said interstate shipments of lumber, shingles, and other forest products from said points of origin to said points of destination which shall in no instance exceed the rates on like shipments between the same points which had been duly filed with the commission as required by law, and which were in effect on October 31, 1907, subject to present minimum weight regulations and to the following limitations:

The rates on said lumber, shingles, and other forest products from said points of origin to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, also including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding those points to which rates are prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, West-

ern Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al., decided June 2, 1908, which were in effect on October 31, 1907, shall be restored, except that the differentials prescribed in case No. 1348, Potlatch Lumber Co. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, shall be observed; the rates which were in effect on October 31, 1907, from said points of origin to points east of the line mentioned, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., may be increased in no case exceeding 5 cents per 100 pounds, and subject to the differentials prescribed in said case No. 1348.

And it is further ordered that these cases be held open for such supplemental proceedings as it may be necessary for interested parties to institute in respect to reparation.

28 VII. Your orators further show that in said cause numbered 1329, wherein the "Pacific Coast Lumber Manufacturers' Association" and others are complainants, and your orators are defendants, and in said cause numbered 1335, wherein the "Southwest Washington Lumber Manufacturers' Association" is complainant and your orators are defendants, the said defendant Interstate Commerce Commission, on July 27, 1908, by order duly entered, changed and extended the effective date of said orders from August 15 to October 15, 1908, and again on September 1, 1908, said defendant commission entered in said causes a further order as follows, to wit:

Upon further consideration of the record in the above-entitled causes:

It is ordered that the order heretofore entered by the commission in said causes on the second day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15th to October 15th, 1908, be, and the same is hereby, further modified and amended by adding thereto the following:

It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers requiring two or more cars, including with each article grouped therewith, from points of origin to destinations west of the Pembina-Port Arthur line, as defined in the original order herein, as to which no such differential, or a differential of less than 10 cents per 100 lbs., existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in Case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

29 It is further ordered, That the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction when the shorter is included within the longer.

IX. Your orators further show that in said cause numbered 1329, wherein the "Pacific Coast Lumber Manufacturers' Association" and others are complainants and your orators are defendants, and in said cause numbered 1335, wherein the "Southwest Washington Lumber Manufacturers' Association" is complainant and your orators are defendants, the said defendant Interstate Commerce Commission, on September 25, 1908, made a further order, as follows, to wit:

Upon further consideration of the record in the above entitled cause,

It is ordered, That the order of September 1, 1908, modifying the original order herein, be, and it is hereby, amended and modified so that it will read as follows:

It is ordered, That the order heretofore entered by the commission in said causes on the 2d day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15 to October 15, 1908, be, and the same is hereby, further modified and amended by adding thereto the following:

It is further ordered, That permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina-Port Arthur Line, as defined in the original order herein,

as to which no such differential, or a differential of less than
30 10 cents per 100 pounds, existed prior to November 1, 1907,

differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

It is further ordered, That all increases made under this order in said differentials above those in effect on October 31, 1907, shall become effective on October 15, 1908, and that as to all shipments which moved subsequent to October 31, 1907, and prior to October 15, 1908, the rates prescribed in the original order herein shall be applied.

It is further ordered, That the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction when the shorter is included within the longer.

X. Your orators further show that the orders in cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and in cause No. 1331, entitled "Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al.," and in said cause No. 1348, entitled "Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al.," referred to in the order so entered by the defendant commission in causes 1329 and 1335, are as follows, to wit:

COPY POUND CL

31 Order.

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 1st day of June, A. D. 1908:

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1054.

PACIFIC COAST LUMBER MANUFACTURERS' ASSOCIATION, SOUTHWESTERN Washington Lumber Manufacturers' Association, and Shingle Mills Bureau

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY Company; Northern Pacific Terminal Company of Oregon; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Oregon & California Railroad Company; Southern Pacific Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Colorado Midland Railway Company; Colorado & Southern Railway Company; Chicago, Burlington & Quincy Railway Company; Chicago, Rock Island & Pacific Railway Company; Atchison, Topeka & Santa Fe Railway Company; Missouri Pacific Railway Company; Leavenworth, Kansas & Western Railway Com-
32 pany; St. Joseph & Grand Island Railway Company; Kansas City Northwestern Railroad Company; and Chicago & Northwestern Railway Company.

This case being at issue upon complaint and answers on file and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, and the Union Pacific Railroad Company, be, and they are hereby, notified and required to establish, on or before the 15th day of August, 1908, between their respective lines of transportation, and maintain in operation for a period of not less than two years from said 15th day of August, through routes for the transportation of fir lumber, cedar lumber, spruce lumber, and shingles from points on the lines of the Northern Pacific Railway Company in Washington north of Portland, Ore., through said Portland to Ogden and Salt Lake City, Utah, and common points in Utah; and also are required to establish and put in force on or before the said 15th day of August, and for a period of at least two years

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thereafter maintain a joint through rate not exceeding 40 cents per 100 pounds in carloads for the transportation of fir lumber and spruce lumber between said points, and a rate not exceeding 50 cents per 100 pounds in carloads for the transportation of cedar lumber and shingles between said points; and the said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain the notation
33 that it is issued under the authority hereby granted, and must refer to the title and number of this case.

It is further ordered, That as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland over the lines of the Northern Pacific Railway Company and the Great Northern Railway Company and the Union Pacific System to other named eastern destinations the complaint in this proceeding be, and it is hereby, dismissed.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1331.

Western Oregon Lumber Manufacturers' Association, Willamette Valley Lumber Company, Falls City Lumber Company, Curtiss Lumber Company, Charles K. Spaulding Logging Company, Booth-Kelly Lumber Company, J. H. Chambers, H. M. Parvin, and Cruzan Brothers, complainants; and Inman-Poulsen Lumber Company, Oregon & Washington Lumber Company, East Side Mill & Lumber Company, Standard Box and Lumber Com-
34 pany, Jones Lumber Company, and St. Johns Lumber Company, interveners,

v.

Southern Pacific Company and Oregon & California Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Southern Pacific Company and the Oregon & California Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the

15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the State of Oregon, and upon the west bank thereof, south of Corvallis, Oregon, and upon the west bank of said river north of said Corvallis to San Francisco, Cal., and bay points.

It is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough green fir lumber and lath, in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River and upon the west bank thereof south of said Corvallis to San Francisco, Cal., and bay points, and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of said Corvallis to said San Francisco bay points, not including in either rate Portland, Oregon, as a point of origin.

35 And it is further ordered, That said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of complying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1348.

Potlatch Lumber Company; St. Joe Lumber Company; B. R. Lewis Lumber Company; McGoldrick Lumber Company; Lamb-Davis Lumber Company; Fidelity Lumber Company; Washington Mill Company; Orrin S. Good; National Lumber Company; Cascade Lumber Company; Springston Lumber Company; Wm. Musser Lumber & Manufacturing Company; Phoenix Lumber Company; Standard Lumber Company; Karamin Lumber Company; E. A. Humphrey and J. R. Humphrey, Partners Doing Business Under the Name of the Elkhorn Saw Mills; Burkeye Lumber
36 Company; Lindsley Brothers Company; W. H. Gerhart-Bradrick Lumber Company, a Co-partnership Composed of W. H. Gerhart and A. V. Bradrick; S. H. & L. Lumber Company, a Co-

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partnership Composed of G. W. Shaw, J. J. Herlihy, and A. W. Lammert; Idaho Pole Company, a Co-partnership Composed of W.L. Beckwith and John H. Fowler; Chewelah Mill Company; Reeves-Farrell Lumber Company; Post Falls Lumber & Manufacturing Company; Laclede Lumber Company; Bonners Ferry Lumber Company; Dehlbohm Lumber Company; Humbird Lumber Company; Dover Lumber Company; Sand Point Lumber & Pole Company; Barber Lumber Company; Overland Lumber Company; Panhandle Lumber Company, Limited; George Palmer Lumber Company; Grande Ronde Lumber Company; Stoddard Brothers Company; Shockley & McMurren Lumber Company; Goodnough Mercantile & Stock Company; Summerville Lumber Company; Wisconsin-Oregon Lumber Company; and Empire Lumber Company,

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY Company; Chicago, Burlington & Quincy Railroad Company; Spokane Falls & Northern Railway Company; Columbia & Red Mountain Railway Company; Kootenai Valley Railway Company; Red Mountain Railway Company; Southern Pacific Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Canadian Pacific Railway Company; Spokane-International Railway Company; Coeur D'Alene & Spokane Railway Company, Limited; Spokane & Inland Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Idaho & Washington Northern Railroad Company; and Chicago, Milwaukee & St. Paul Railway Company of Washington, Defendants; Oregon & Washington Lumber Manufacturers' Association, Intervener.

This case being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That said defendants, except the Chicago, Milwaukee and St. Paul Railway Company of Washington, are hereby notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present relation of rates on interstate shipments of lumber, shingles, and other forest products from points of origin in Washington, Oregon, Idaho, and Montana, to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al. and case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al.

It is further ordered, That said defendants and each of them, except the Chicago, Milwaukee & St. Paul Railway Company of Washington, be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years rates on said interstate shipments of lumber, shingles, and other forest products in accordance with the following differentials:

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane Rates" group to points on and west of a line drawn from Pembina, N. Dak., southward
38 through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Texas, along the Kansas City Southern Railway, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the rates prescribed by the commission in cases No. 1327, Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. et al.; No. 1329, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry Co. et al., and No. 1335, Southwest Washington Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et al.; from the "Coast Rates" group, by differentials beginning at not less than 2 cents per 100 pounds, and graded up westwardly (a) to a differential of not less than 6 cents per 100 pounds at Buford, N. Dak., on the line of the Great Northern Railway; (b) to a differential of not less than 6 cents per 100 pounds at Medora, N. Dak., on the line of the Northern Pacific Railway; (c) to a differential of not less than 6 cents per 100 pounds at Edgemont, S. Dak., on the line of the Chicago, Burlington & Quincy Railroad; (d) to a differential of not less than 6 cents per 100 pounds at Cheyenne, Wyo., on the line of the Union Pacific Railroad; (e) and to a differential of not less than 6 cents per 100 pounds at Denver, Colo., on the line of the Union Pacific Railroad.

Rates from the present "Spokane Rates" group and from the present "Montana-Oregon" rates group to points on the west of said north and south line, Pembina-Port Arthur, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "Coast Rates," as prescribed in the cases specified, by differentials beginning at not less than 3 cents per 100 pounds and graded up westwardly therefrom to a differential of not less than 7 cents per 100 pounds at Buford, N. Dak., Medora, N. Dak., Edgemont, S. Dak., Cheyenne, Wyo., and Denver, Colo., as described in the preceding paragraph.

39 Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane Rates" group to points east of said line, Pembina-Port Arthur, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "Coast Rates," as prescribed

in the cases specified, by a differential of not less than 2 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi River crossings.

Rates from the said "Spokane Rates" group and the "Montana-Oregon" rates group, as those groups now exist, to points east of said line, excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "Coast Rates," as prescribed in the cases specified, by a differential of not less than 3 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River Crossings to the Mississippi River crossings.

And it is further ordered, That as to the Chicago, Milwaukee & St. Paul Railway Company of Washington the complaint in this proceeding be, and it is hereby, dismissed.

40 XI. And your orators further show that the defendant Interstate Commerce Commission on the 1st day of September, 1908, in said cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association, et al., v. Northern Pacific Railway Company, et al.," entered a further order as follows, to wit:

Upon further consideration of the record in the above-entitled cause:

It is ordered, That the order heretofore entered herein by the commission on the first day of June, 1908, and as amended by the order of the commission entered on the 27th day of June, 1908, changing the effective date of said order from Aug. 15, 1908, to Oct. 15, 1908, be further modified and amended so as to read as follows:

It is ordered, That, as the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company, have failed and neglected to voluntarily establish a through route for the transportation of forest products between the points hereinafter named, and as no reasonable or satisfactory through route now exists between said points, that said defendants last named be, and they are hereby required on or before the 17th day of October, 1908, to establish, and maintain in operation for a period of not less than two years thereafter, through routes through Portland, Ore., over their respective lines of railroad for the through transportation of fir and spruce lumber, shingles, cedar lumber, and long timbers requiring two or more cars, including with each commodity named other forest

41 products grouped therewith in the tariff hereinafter mentioned, from all points in Washington on the line of the Northern Pacific Railway Company as far north as Seattle and not east of Palmer, Wash., excluding points south and east of Seattle having rail connection with Seattle only by junction points north of Seattle,

to Salt Lake and Ogden, Utah, and to all other points in Utah taking same rates as Salt Lake and Ogden on shipments of forest products from Portland, Ore., as shown by Transcontinental Freight Bureau Tariff I. C. C. No. 564 and supplements thereto.

It is further ordered, That the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company be, and they are hereby, notified and required to establish and put in force on or before the 17th day of October, 1908, and maintain for a period of two years thereafter, joint through rates applicable to said through routes on the forest products hereinafter named, including with each other forest products grouped therewith in the tariffs last above mentioned, from all points of origin on said through routes to all destinations above named, which said joint through rates shall in no case exceed the following scale in cents per hundred pounds:

Fir and spruce lumber in carloads	$0.40
Shingles, in carloads	.50
Cedar lumber	.50
Long timbers requiring two or more cars	.50

subject, however, to present minimum weight regulations.

It is further ordered, That in establishing joint rates on the forest products above named applicable to the through routes hereinbefore ordered between the respective points of origin and destinations mentioned, said defendants shall in no case make said joint through rates more than 2½ cents per 100 pounds higher than the rates on the same forest products from Portland, Ore., to said destinations.

42 It is further ordered, That the above order does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction via the same line when the shorter is included within the longer.

It is further ordered, That said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain notation that it was issued under the authority hereby granted and must refer to the title and number of this case.

It is further ordered, That as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland, Ore., over the lines of the Northern Pacific Railway Company, the Great Northern Railway Company, and the Union Pacific System to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed.

XII. Your orators further show that the effect of the orders so entered by the defendant in said Cause 1329 and 1335, if enforced, will be to reduce the rates fixed by the tariffs of your orators for the transportation of lumber, shingles, and forest products from points

within the State of Washington to points in the other States above mentioned, substantially five cents (5c) a hundred pounds, and in some instances more than five cents a hundred pounds.

XIII. Your orators aver and charge that in making said order and endeavoring to establish said rates, said commission acted without warrant of law; that the said act of 1887 to regulate commerce, and the several acts amendatory thereof and supplementary thereto,
43 particularly the amendment of June 29, 1906, popularly known as the Hepburn bill, under which said commission professed to act, are in violation of the Constitution of the United States in that they profess to confer upon said commission executive, legislative, and judicial powers. More specifically pleading in this behalf, your orators say: All through said acts administrative powers are conferred upon the commission. In section 15 the commission is authorized to act as a court, to take judicial cognizance of complaints filed for damages, and after hearing to award damages, which award establishes a prima facie right in the complainant, and which no carrier against whom the award has been made can resist except by assuming the burden of proof and overthrowing the prima facie effect of the commission's award. The award can be resisted only under penalty of the carriers paying not only the usual costs of suit but an attorney's fee to complainant in addition if cast in the action.

By section 15 of said act, said commission is authorized and empowered, after a hearing upon complaint, whenever in its opinion any rate or charge demanded charged or collected by any carrier subject to the act is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, to determine and prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case as the maximum to be charged, and to make an order that the carrier shall cease and desist from demanding, charging, or collecting the rate or charge complained of and condemned by said commission, and shall not thereafter, for a period not exceeding two years, publish, demand, or collect any rate or charge in
44 excess of the maximum rate or charge so prescribed by said commission as a substitute for the rate or charge condemned.

Under the provisions of said section and of section 13 of the act, in which the complaint containing a statement of the charges made is more particularly provided for, the commission is empowered to proceed, and the proceeding itself is against the particular carrier or carriers, and such carrier or carriers only as are charged with unreasonableness in the matter of its or their rates; and upon hearing and trial of such carrier or carriers in said proceeding, the said commission, under the aforesaid sections, is authorized to adjudge the rate or charge of said particular carrier or carriers to be unreasonable, and as a consequence thereof to adjudge against said particular carrier or carriers another different and lower rate as the maximum to be charged by such particular carrier or carriers in such case, for a period not exceeding two years. Such proceedings, hearing, trial, determination, and judgment involve and require the exer-

cise of judicial power by the said commission, and it is not competent to Congress to invest said commission with such power; and any investiture, distribution, or exercise of such power in, to, or by said commission is in violation of the Constitution of the United States, and particularly so much thereof as provides for the distribution and exercise of the judicial authority of the United States; and herein reference is made to section 1 of Article III of the Constitution of the United States; and the commission has and possesses no such judicial power.

Further pleading as to that provision of section 15 of the act to regulate commerce, as amended, which declares that the com-
45 mission shall prescribe what shall be the reasonable rate or rates, charge or charges, to be observed as the maximum to be charged, your orators say this provision is contrary to the Constitution of the United States, and especially to section 1, Article I, above quoted, in that, by that article all legislative power is confined to the Congress of the United States. The prescribing of a maximum rate which carriers may charge is a legislative function. Congress has not prescribed a maximum rate to govern in the cases provided for, but by said act delegates this power to the commission, and in doing so places in its hands legislative power.

XIV. Your orators aver that in and by section 1 of the said act to regulate commerce it is provided that all charges made by any common carrier subject to the act, for any service rendered or to be rendered in the transportation of property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. That your orators, as the owners and operators of the railroads herein above described, and the franchises, equipment, and appurtenances connected with such railroads, are entitled to the possession, management, and beneficial use thereof, and are authorized to establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable. In and by section 15 of the said act the Interstate Commerce Commission is authorized and empowered, after hearing upon complaint, whenever it shall be of the opinion that any of the rates or charges demanded or charged or collected by any common
46 carrier for the transportation of property as defined in the first section of the act are unjust or unreasonable or otherwise in violation of any of the provisions of the act to determine and prescribe what will be a just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and to make an order that the carriers shall cease and desist from such violation to the extent that the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed. That in and by said section 15 of said act it is provided that all orders of the commission prescribing rates shall take effect within a reasonable time, and not less than 30 days

after the making of the same, and shall continue in force for such period, not exceeding two years, as established and prescribed by the order of the commission, unless the same shall be suspended or modified or set aside by the commissioners, or be suspended or set aside by a court of competent jurisdiction. That in and by the 16th section of the said act it is provided that any carrier or any officer or agent of any carrier who knowingly fails or neglects to obey any order of the commission prescribing rates as provided in said section of the act, shall forfeit to the United States the sum of $5,000 for each offense, and that each distinct violation shall be deemed a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

Your orators aver that the present rates attempted to be set aside by said order, but fixed and established by your orators for the transportation of lumber, shingles, and other forest products from
47 points aforesaid mentioned in the order of the said commission, and each of the said rates, are and will be for more than three years hence low, just, and reasonable rates for the service performed in the transportation of said commodities between said places and each of them, and that the rates prescribed by the commission in and by its order are, and each of said rates is and will be for more than three years hence, unjust and unreasonable for the service performed in the transportation of lumber, shingles, and other forest products and are and will be inadequate compensation to your orators for the service rendered.

Your orators aver that by Article V of the amendments to the Constitution of the United States your orators have the right to a judicial investigation in a court by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy of the question as to the reasonableness of the said rates so fixed and established by your orators, and of the question as to the reasonableness of the said rates so fixed and established by the said commission as aforesaid, and of each of said questions.

That the attempt of the commission in and by said order sought to be set aside herein, to set aside and annul the rates established by your orators, and the establishing of the said rates prescribed by said orders and each of them by the said commission, against the will of your orators was pro tanto the taking of the property of your orators and depriving your orators thereof without due process of law, in violation of Article V of the amendments to the Constitution of the United States; and that the making of the said order of the
48 commission herein set out was pro tanto a taking and depriving the company of its property without due process of law, in violation of Article V of the amendments to the Constitution of the United States, and thereby void and of no effect.

Your orators further aver that the attempt of sections 15 and 16 of the said interstate commerce act to make any order of the commission prescribing rates to be charged for the transportation of property

became effective of its own force prior to a hearing in a court of justice of the question of the reasonableness of the rates prescribed by said order, and said sections 15 and 16 in that regard are void for the reason that in and by section 1, Article III, of the Constitution of the United States, all judicial power is conferred upon a Supreme Court of the United States and such inferior courts as Congress may establish, and the judges of said Supreme Court and such inferior courts shall hold office during good behavior, and the said commission has no power to prescribe any time upon which any order of the said commission prescribing rates for the transportation of property to take effect, and that the said order of the said commission is void and of no effect.

That section 16 of said act is unconstitutional and void in that it is therein provided that your orators, and each of them, and any officer or agent of your orators, knowingly failing or neglecting to obey the said order of the commission herein set forth, shall forfeit to the United States the sum of $5,000 for each day that your orators or said officers or agents fail to obey said order, notwithstanding that the question of the reasonableness of the rates established by the said order has not been judicially investigated by due process of
49 law in any court of justice, and in that said section makes said order a finality unless suspended by the commission or by some court of competent jurisdiction, and subjects your orators to penalties and forfeitures as therein provided, and deprives your orators of their property without due process of law, contrary to Article V of the amendments to the Constitution of the United States, and the force and effect of said order sought to be enjoined and set aside herein has been to compel your orators, in order to prevent their property from being forfeited through the operation of such penalties and to save the agents of your orators from being subjected to such penalties (notwithstanding such penalties are only imposed because of said orders of said commission attempting to prescribe and establish such rates), to publish and put into effect on October 15, 1908, the unreasonably low rates so attempted to be prescribed by said commission in and by said order, whereby your orators aver that their property has been and is now being taken from them against their will, and without due process of law, and without their having had a day in court and the right to a judicial investigation by a court under due process of law for the determination of the truth of the matter in controversy before said commission.

XV. Your orators further show that the only authority sought to be vested in the defendant, Interstate Commerce Commission, to fix rates for the transportation of property over the lines of your orators' railways is conferred by said section fifteen of said amended act of Congress, approved June 29, 1906, by the terms whereof it is provided that whenever the said commission shall, after a
50 full hearing, be of the opinion that any of the rates or charges demanded, charged, or collected by any common carrier or

carriers, subject to the provisions of said act, for the transportation of property are unjust or unreasonable, it shall be authorized "to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be observed in such case as the maximum to be charged," and your orators further show that the said order so entered in said causes No. 1329 and 1335, on June 2, 1908, and the said orders amendatory thereof are further unauthorized and void, for the reason that your orators have at no time prescribed rates for the transportation of lumber, shingles, or forest products between the points named in said order in excess of charges which are just and reasonable. And furthermore, upon the hearing before the defendant in said causes, in which said order was so entered, no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust, or unreasonable, and the defendant, Interstate Commerce Commission, entered its said order without any justification therefor, and without any evidence or finding of fact that said rates so fixed by said defendant were excessive, unjust, or unreasonable.

XVI. Your orators further show that the rates for the transportation of lumber, shingles, and forest products from points within to points without the State of Washington, as fixed by the said tariffs, so in effect, on October 31, 1907, were substantially the same rates that were fixed by your orators in the year 1893 and solely by
51 reason of the fact that said rates had been long continued was the conclusion reached by the defendant, Interstate Commerce Commission, that the rates complained of in said causes 1329 and 1335, which were and are higher than the rates theretofore in effect, were unreasonable and unjust, and solely by reason of this fact was said orders so entered by the commission, but your orators show that it was established by uncontradicted evidence upon the hearing before the commission that the circumstances and conditions which existed at the time said previous rates were established did not exist on November 1st or 2nd, 1907, and did not exist at the time of said hearing, and had not existed for more than three years prior thereto. That it was established at the hearing before the defendant commission by uncontradicted evidence that at the time said previous rates were established the condition of the lumber market in the United States was such that the lumber product of the State of Washington could not move to other States in any considerable quantity at rates higher than those so established, but that the conditions in this respect have been gradually changing by reason of the exhaustion of the timber supply in Michigan, Minnesota, and Wisconsin and the rapid increase in the value of the yellow pine product of the Southern States, so that it was established at said hearing by uncontradicted evidence that for a period of at least three years before November 1st, 1907, the occasion for maintaining rates so low as those established in 1893 had ceased. And your orators further aver that the said defendant commission in the determination of the issues involved

in said complaint expressly found that in and prior to the year
52 1893 the lumber interests in the States of Washington and Oregon were in their infancy, and, except for purely local consumption, mills located therein disposed of their surplus at points reached by water transportation, and that the volume of business was small for a considerable time, even after the railroads of your orators reached the coast; that prior to the year 1893 the rates on lumber and forest products from said States to Omaha, St. Paul, and other eastern destinations were higher than the rates established in 1893, and that under said higher rates little, if any, of the lumber in said States moved eastward to said eastern destinations; at that time and for several years thereafter and until the practical disappearance of competition with white pine lumber manufactured in Wisconsin, Minnesota, and Michigan manufacturers of lumber in Washington and Oregon were unable to meet the competition of southern yellow pine and northern white pine in the States hereinbefore referred to, but that following upon the reduction in said rates inaugurated in 1893 the lumber interests in said States of Oregon and Washington increased enormously and many mills were built in the interior, so that at and for several years prior to the hearing of said complaint shipments were and had been constantly made in large amounts eastward by the lines of your orators to eastern markets, amounting to a large percentage of the output of said mills; and your orators further aver that it was expressly found to be a fact by the defendant commission that during the period of time that elapsed after the reduction in said rates in 1893 down to the time of said hearing in the State of Washington the price of manufactured lumber had greatly increased with increasing profits to the
53 manufacturer, resulting from the market thus secured to him through said reduced rates, and the general advance in price in said markets during the years aforesaid, and the generally prosperous conditions surrounding the manufacture and sale of lumber in the States hereinbefore referred to, whereby your orators aver that the commission found that each and every of the conditions surrounding the lumber industry had completely changed from the time said rates were established in 1893, and that the prosperous condition of said industry on and for more than three years prior to November 1, 1907, did not require or justify the further maintenance of rates so low as those established in 1893, under the circumstances aforesaid. It was also shown by uncontradicted evidence at said hearing that your orators established and maintained the rates in effect before November 1st, 1907, for the reason that in 1893, and for many years thereafter, the great volume of traffic moving over your orators' lines of railway was west-bound, and the State of Washington and the neighboring territory furnished insufficient traffic to load east-bound the cars employed in moving the west-bound traffic, and that the rates on lumber, shingles, and forest products were so fixed and at an abnormally low point to furnish loads for cars which would have otherwise moved east without revenue

producing freight, but that for some time before November 1st, 1907, the conditions had so changed that it was necessary to haul empty cars to the State of Washington in order to furnish facilities for the movement of lumber, shingles, and forest products. It was also shown at said hearing by uncontradicted evidence that every other important element in the cost of transporting the commodities
54 in question had greatly increased over the cost in 1893 and subsequent years. And your orators further aver that the defendant commission expressly found in its determination of said complaints that in the year 1893, when said low rates were established, the empty car movement on the lines of your orators was east-bound, and that at that time and for some years thereafter the great volume of traffic moving over your orators' lines of railway was west-bound; but your orators aver that said commission also found that this condition in and about the transportation of lumber from the States of Oregon and Washington had likewise changed since said rates were established in that at and for several years prior to the hearing of said complaint the direction of the empty car movement on the lines of your orators has been reversed and the same is now west-bound, and that your orators are now and for several years prior to November 1, 1907, have been compelled to haul west-bound large numbers of empty cars for the purpose of furnishing equipment in the States of Oregon and Washington for the loading of lumber east-bound into the States hereinbefore referred to, where said lumber is now sold. And your orators further aver that the commission not only expressly found that the volume of lumber shipped during the last few years over the lines of your orators east-bound had enormously increased, and that the lumber interests engaged in said traffic have been extraordinarily prosperous in the past few years, but also found that the density of traffic on the lines of your orators has increased to such an extent that it is more than can be advantageously handled on single-track roads such as the lines of your orators practically are, and that because of the increase
55 in density of traffic aforesaid your orators have been compelled to and are now engaged in constructing double-track extensions in some cases, in order more advantageously and expeditiously to handle this increased traffic. Your orators further aver that the commission found that the expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials, over and above the expense of operation as it existed at and for a few years after the year 1893, and further found that the increased traffic of your orators has required additional working force and equipment, thus recognizing and establishing the contention of your orators that in the matter of the transportation of lumber from the State of Washington the conditions had greatly changed from the conditions in force at the time said rates were established in 1893.

Your orators further show that the conditions with respect to the transportation of the commodities in question so existing on Novem-

ber 1st, 1907, and for several years before that time, continued to the time of said hearing, as was shown by the uncontradicted evidence there produced, and, as your orators are informed and believe, will continue for at least a period of two years from October 15, 1908. Your orators further show that notwithstanding the fact that it was so conclusively established at said hearing before the defendant commission that such rates maintained by your orators before November 1st, 1907, were established and maintained under conditions wholly different from those existing at the time the rates complained of took effect and at the time of the hearing, the defendant, Interstate Commerce Commission, held as a matter of law that the continuance of said previous rates raised a presumption that such higher
56 rates were unjust and unreasonable, wherein said commission acted erroneously and through a mistake and under a misapprehension of the law and without authority.

XVII. Your orators further show that the rates so fixed by the tariffs so becoming effective on November 1st and 2nd, 1907, are lower than the rates charged for any like service by any carriers in the United States, and lower than rates heretofore fixed by the defendant, Interstate Commerce Commission, for like services. The rates so fixed by said order are unremunerative and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the State of Washington to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order, and your orators upon information and belief aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on other traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden not only upon your orators but upon the shippers of other commodities.

Your orators further show that the enforcement of said order of the defendant will deprive your orators of revenue from the transportation of lumber, shingles, and forest products to which
57 they would be entitled under the rates fixed by said tariffs so filed, published, and posted to an amount of more than six hundred thousand dollars per year, and each of your orators, by the enforcement of said order, will be deprived of revenue in a sum greatly in excess of two thousand dollars per year.

XVIII. Your orators, therefore, pray that a decree be entered herein setting aside and annulling the said orders of the defendant, Interstate Commerce Commission, in said causes Nos. 1329 and 1335 and perpetually enjoining the defendant and its members, their agents, servants, and representatives, from enforcing said orders,

and from taking steps or instituting any proceedings for the enforcement of said orders.

And your orators further pray that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that your honors grant unto your orators a writ of subpœna, directed to said Interstate Commerce Commission, commanding it at a certain day and under a certain penalty therein to be specified, to be and appear before your honors in this honorable court and then and there full, true, and complete answer make to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived), and to stand to and abide such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will every pray.

Northern Pacific Railway Company, by J. M. Hannaford,
58 2nd vice president, (corporate seal); Great Northern Railway Company, by Robt. I. Farrington, 2nd vice president, (corporate seal); Chicago, Burlington & Quincy Railroad Company, by D. Miller, 1st vice president; Union Pacific Railroad Company, by J. C. Stubbs, its traffic director; Oregon Short Line Railroad Company, by J. C. Stubbs, its traffic director; Oregon Railroad & Navigation Company, by J. C. Stubbs, its traffic director; James B. Kerr, Hale Holden, of counsel for Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company; W. W. Cotton, F. C. Dillard, of counsel for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company; James B. Kerr, Hale Holden, solicitors for complainants, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company; N. H. Loomis, W. W. Cotton, P. L. Williams, F. C. Dillard, solicitors for complainants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company.

59 STATE OF MINNESOTA,
County of Ramsey, ss:

J. M. Hannaford, being first duly sworn, on oath states that he is the 2nd vice president of the Northern Pacific Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein

contained are true except where made upon information and belief, and where so made affiants states that he believes them to be true.

J. M. HANNAFORD.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

[SEAL.] W. T. FRANCIS,
Notary Public, Ramsey County, Minnesota.

My commission expires April 5, 1911.

STATE OF MINNESOTA,
County of Ramsey, ss:

R. I. Farrington, being first duly sworn, on oath states that he is the second vice president of the Great Northern Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

ROBT. I. FARRINGTON.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

[SEAL.] EARLE W. MCELROY,
Notary Public, Ramsey County, Minnesota.

My commission expires April 14, 1911.

60 STATE OF ILLINOIS,
County of Cook, ss:

D. Miller, being first duly sworn, on oath states that he is the 1st vice president of the Chicago, Burlington & Quincy Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations contained therein are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

D. MILLER.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] J. H. PETTIBONE, *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Union Pacific Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained

are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

61 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Short Line Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true, except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Railroad & Navigation Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true, except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

(Endorsed:) Filed October 20th, 1908. Henry D. Lang, clerk.

62 Thereafter and on October 31st, 1908, the following appearance was filed and entered in said cause, viz:

63 In the Circuit Court of the United States for the District of Minnesota, Third Division.

Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, complainants, *vs.* The Interstate Commerce Commission, defendant.	In equity. No. 884.

To Henry D. Lang, Esq.,
Clerk of said Court.

Sir: Please enter my appearance as of counsel for the defendant, The Interstate Commerce Commission, in the above-entitled cause, Oct. 28, 1908.

Respectfully, W. A. Wimbish.

(Endorsed:) Præcipe for appearance of W. A. Wimbish for defendant. Entered C. R. "C," page 143. Filed October 31st, 1908. Henry D. Lang, clerk.

64 United States Circuit Court, District of Minnesota, Third Division.

Chancery rule and order book.

Northern Pacific Railway Co. et al. *vs.* Interstate Commerce Commission.	Equity. No. 884.

Oct. 31, 1910.

This day comes the defendant, Interstate Commerce Commission, by W. A. Wimbish, its solicitor, on whose motion it is hereby ordered that the appearance of said defendant be, and the same hereby is, entered that *that* the appearance of the said W. A. Wimbish as additional solicitor for the defendant be, and the same hereby is, entered.

(Entered) C. R. "C," page 143.

65 Thereafter and on the 16th day of December, 1908, the following demurrer and answer of the Interstate Commerce Commission was filed in said cause, to wit:

66 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, complainants, *v.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity. No. 884.

Demurrer and answer of Interstate Commerce Commission, abovenamed defendant, to the amended bill of complaint of the abovenamed complainants.

(1) Demurrer.

This defendant, the Interstate Commerce Commission, by protestation, not confessing or acknowledging all or any of the matters and things in the said amended bill contained to be true in such manner and form as the same are therein set forth and alleged,

67 as to so much of the said amended bill (paragraph XIII and paragraph XIV, excepting the clause on page 30 beginning "Your orators aver, etc.") as seeks to aver that the act to regulate commerce as amended June 29, 1906, is unconstitutional and void, does demur thereto, and for cause of demurrer shows that said complainants have not, as appears by said portions of their said amended bill, made out any title to any equitable relief.

Defendant specially demurs to said portion of complainants' amended bill and assigns as such grounds of demurrer:

I. That the power to prescribe maximum rates to be charged in the future on interstate traffic has constitutionally been delegated by Congress to this defendant.

II. That the Interstate Commerce Commission, in hearing and considering evidence and arriving at conclusions regarding the reasonableness of rates to be established, proceeds in accordance with due process of law, and does not therein or thereby exercise the judicial power invested by the Constitution in the courts of the United States.

III. That in entertaining complaints for reparation and in granting orders for the payment of money thereon, which orders
68 are prima facie evidence of damages owing to complainant before this defendant, the Interstate Commerce Commission does not exercise such a purely judicial function as is forbidden by the Constitution.

IV. That the provision of the statute which authorizes the Interstate Commerce Commission to entertain complaints for reparation and to grant orders for the payment of money thereon is entirely separable and distinct from the remaining provisions of the act to regulate commerce as amended and does not in anywise affect the constitutionality or validity of the remaining portions of the act.

V. That whether or not in entertaining complaints for reparation and in granting orders for the payment of money thereon the Interstate Commerce Commission does exercise such a purely judicial function as is forbidden by the Constitution can not be drawn in question in this case for that there is no allegation that this defendant has exercised such power.

VI. That the portion of the act to regulate commerce as amended which provides for penalites for willful disobedience to the orders of the commission is not offensive to the fifth amendment to the Constitution.

69 VII. That the portion of the act to regulate commerce which provides for penalties for willful disobedience to the orders of the commission is entirely separable from the remaining portions of the statute and does not in anywise affect the constitutionality or validity of the remaining portions of the statute.

VIII. That whether or not the penalties prescribed in the act to regulate commerce as amended for willful disobedience to the orders of the commission would render the statute in that regard offensive to the fifth amendment to the Constitution can not be drawn in question in this case for that it affirmatively appears that the complainants while seeking relief in this court are observing and obeying the said orders of the commission and are not exposed to prosecution for penalties or forfeitures.

IX. That in providing for penalties against common carriers violating the act to regulate commerce by disobeying the orders of the said commission, the statute does not offend the fifth amendment to the Constitution for that the statute expressly authorizes a suit in the Circuit Court of the United States to enjoin, suspend, or set aside the orders of the commission either before or after such
70 orders become effective; and said statute further confers jurisdiction and lays the venue for the judicial hearing according to established methods before any penalties or forfeitures can be declared, thereby preserving due process of law.

Wherefore, for divers other good causes for demurrer appearing in the said amended bill, defendant prays the judgment of this honorable court whether it shall be compelled to make any answer to such parts of the said amended bill as it has hereinbefore demurred to.

(2) Answer.

And the defendant, the Interstate Commerce Commission, not waiving the said several demurrers, but wholly relying and insisting thereon for answer to so much of the residue of the said amended bill as it is advised that it is material or necessary for it to make answer unto, answering, says:

I. Defendant admits the allegations of Paragraph I.

II. Defendant admits the allegations of Paragraph II.

III. Defendant admits the allegations of Paragraph III.

71 IV. Defendant admits the allegations of Paragraph IV.

V. Defendant admits the allegations of Paragraph V that the rates named in said tariffs so filed, published, and posted thereupon became and were the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all the points in the State of Washington named in said tariffs to each and all the points of destination in said other States named in said tariffs; but defendant denies that the rates named in said tariffs were on November 1, 1907, ever since have been, and now are, neither unreasonable nor unjust; and defendant further denies that said rates will continue to be neither unreasonable nor unjust for a period of two years from October 15, 1908.

VI. Defendant admits the allegations of Paragraph VI.

VII. Defendant admits the allegations of Paragraph VII.

VIII. Defendant admits the allegations of Paragraph VIII.

72 IX. Defendant admits the allegations of paragraph IX.

X. Defendant admits the allegations of paragraph X.

XI. Defendant admits the allegations of paragraph XI.

XII. Defendant admits the allegations of paragraph XII, that the effect of the orders so entered by the defendant in said causes 1329 and 1335 if enforced will be to reduce the rates established by complainants for the transportation of lumber, shingles, and forest products from points within the State of Washington to many points in other States 5 cents per 100 pounds, and in some instances more than 5 cents per 100 pounds; but defendant avers that the net result of the enforcement of said orders in said cause will be to leave in full force and effect rates to most of the points embraced in said order which are materially higher than the rates which hitherto had been voluntarily charged by complainants for many years previous to November 1, 1907.

XIII. (Entire paragraph in amended bill of complaint covered by special demurer.)

73 XIV. (All of paragraph XIV in the amended bill of complaint is covered by special demurrer except the clause on page 30 beginning " Your orators aver, etc.")

Defendant denies the allegations of paragraph XIV, that the rates in effect prior to the effective date of the orders complained of for the transportation of lumber, shingles, and forest products between the points mentioned in said orders, and that each of the said rates

are, and will be for more than three years hence, low, just, and reasonable rates, within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law.

Defendant avers that this court can not and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect just and reasonable.

Defendant denies that the rates prescribed by it in and by its orders are, or that any of them is or will be for more than three years hence, unjust and unreasonable within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law. Defendant avers that this court can not and will not inquire into

74 the matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect unjust and unreasonable.

Defendant further denies that the rates fixed by this defendant are, or that any of them is or will be, to complainants, for the service rendered, inadequate compensation within the aforesaid constitutional guaranty or otherwise.

Defendant avers that complainants should not be heard to maintain this suit in equity, for that the said complainants have a complete and adequate remedy by proceedings before this defendant in that all the matters and things in the complainants' amended bill set forth are cognizable before this defendant; that upon application of the complainants or of any of them and upon proper showing, this defendant has power to suspend, modify, or amend in whole or in part the orders complained of and to consider any and all of the matters in the complainants' amended bill set forth and to take such action thereon, and to make such order thereon, as in its judgment would be proper to make; and that in advance of such application by the complainants to this defendant the complainants are not entitled as a matter of right to invoke the jurisdiction of this court in equity.

Defendant further avers that this court, sitting as a court of

75 equity, should not herein either hear or determine the rights of the complainants upon any state of facts which were within the knowledge of the complainants and which they failed and neglected to present before this defendant at the time of the hearings out of which the orders complained of grew, nor on account of any facts, matters, or things which may have arisen since said hearings, except such facts, matters, or things be first presented by application for rehearing or otherwise to this defendant. Neither does said amended bill of complaint set forth any reason why any of such matters and things could not be or were not presented to this defendant, nor that any facts, matters, or things have arisen since the said

hearings, nor that the complainants, or either of them, have in any manner been prevented from presenting to this defendant for its consideration any of the matters or things in the complainant's amended bill set forth.

Complainants have failed to make any application to the defendant for a rehearing of said matter, on account of any such facts, to have said orders suspended, set aside, or modified, although complainants well knew at all times since June 2, 1908, the date of the report of the defendant, that the orders complained of would be issued as a matter of course unless upon application of the complainants herein (defendants before the commission) such facts should be shown to this defendant as would entitle complainants to have said orders suspended, modified, or set aside.

76 Defendant further avers that this court ought not to consider the averments in complainants' amended bill of complaint that the transportation of traffic on rates prescribed by the defendant will not afford a fair compensation or will entail a loss, or that the same are unremunerative, or that the same are unjust and unreasonable for the service performed, because such allegations and declarations are statements of conclusions and opinions of interested parties and do not have coupled therewith any statement of any of the essential elements of facts upon which or from which the reasonableness of a rate can be determined.

Defendant further says that it is vested with the exclusive right and power of determining what are just and reasonable maximum rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry upon original evidence leading to an independent conclusion; that in determining what are just and reasonable maximum rates to be charged in the future, this defendant must and does exercise discretion; that this court ought not and can not substitute its judgment and discretion for the judgment and discretion of this defendant; that this court will only determine whether the rates prescribed by this defendant are just and reasonable within the meaning of the constitutional guaranty which compels the establishment of rates with reasonable regard for the cost to the carrier

77 of the service rendered and for the value of the property employed therein, and also with reasonable regard for the value of the service to the public.

This defendant further says that the complainants do not aver in their amended bill that they or either of them are in possession of any information or facts upon which to base the said conclusion that the rates established by this defendant are unjust and unreasonable, other than the facts and evidence which were presented before the defendant in the hearing out of which the orders complained of grew, all of which facts and evidence were presented to this defendant and were by it duly considered.

Defendant shows that the ascertainment mathematically of what it costs to haul a given quantity of traffic of a certain description

between two points upon a certain line of railway is impossible; that over the same line of railway, hauled by the same engine, are carried in the same train traffic in varying quantities widely different in character and value; that over the same line of railway is hauled both freight and passenger traffic in different trains of varying size; that the fixed charges of maintenance and operation can not be apportioned with mathematical exactness to the one kind of traffic or to the other; that in the same train over the same line of railway are hauled both interstate intrastate traffic; that the cost of operation and of handling these two classes of traffic can not be mathe-
78 matically determined so as to apportion to each class of traffic its proper division of cost; that while a considerable proportion of cost and expense can be located to the particular service or the particular traffic in a given instance, yet that varies materially with conditions on particular lines of road with the volume, density, and direction of movement, and that no method of apportionment between different articles of freight can be devised except that which involves the exercise of discretion and judgment, results varying according to the method used.

Defendant therefore says that the statements and allegations of Paragraph XIV of the amended bill above referred to are mere allegations and opinions which involve consideration of all these complex and difficult problems, and should not be accepted for the purpose of setting aside the orders of this defendant.

XV. Defendant denies that complainants have at no time prescribed rates for the transportation of lumber, shingles, and forest products between the points named in said orders in excess of charges which were just and reasonable. Defendant denies that upon the hearing before it in said cause in which said orders were so entered no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were exces-
79 sive, unjust, or unreasonable; denies that the defendant entered its orders without any justification therefor, and without any evidence or finding of fact that said rates so complained of were excessive, unjust, or unreasonable.

On the contrary, defendant avers that evidence was introduced before this defendant showing, and tending to show, that the rates complained of before this defendant and condemned by it in the orders in question, were unjust and unreasonable, and this defendant, after a full hearing afforded to all the parties to the complaint before it, was of the opinion that said rates so complained of were unjust and unreasonable and entered its orders accordingly. Defendant avers that in accordance with the statute in such cases made and provided it made a report in writing in respect to the matter under investigation, which report stated the conclusions of this defendant, together with its decision, order, and requirement in the premises. Said report or opinion is attached hereto as Exhibit A and is made part hereof as fully as if the same was set forth in full in this paragraph of the answer. Defendant says that the facts shown by

said investigation material to be considered by this defendant are stated fully, fairly, and completely in said report.

Defendant further says that every opportunity was afforded to complainants herein in the hearing before this defendant to introduce any and all testimony and evidence which in any wise was
80 pertinent to the matters involved in said hearings, and that at said hearings complainants herein declined to introduce further testimony and announced to this defendant that they had no further evidence to offer, and so rested their case on the evidence before this defendant.

Defendant further says that while the matters and things embraced in what are known as dockets Nos. 1329 and 1335 were pending before this defendant there were at the same time pending similar matters and things in what are known as dockets Nos. 1327, 1331, 1348, and 1054, and that by agreement of counsel in cases Nos. 1329 and 1335, to which complainants herein were parties defendant, any and all matters and things presented to this defendant in the hearings in said other cases might, and should, be considered by this defendant with the same force and effect as if the same had been formally presented and made part of the record in Nos. 1329 and 1335.

XVI. Defendant denies the allegations of Paragraph XVI.

Defendant avers that the conclusions sought to be drawn from said testimony tending to show the facts stated in said paragraph were strongly and earnestly controverted by complainants in the hearing before this defendant, and much testimony in oppo-
81 sition to the claims of the defendants in the hearing before this defendant was introduced; and that there was some conflict in the testimony and evidence before this defendant. Defendant further avers that each and every member of the Interstate Commerce Commission fully realized the great importance of the issues involved in the complaint before this defendant; that each and every member of this defendant gave personal attention to all the testimony offered upon either side during the several days occupied in the taking of testimony, and afterwards heard all parties at great length in oral argument; and that the members of this defendant carefully examined and considered the various matters of fact and argument contained in the voluminous briefs filed by each party to the hearing before this defendant. Defendant further avers that the orders complained of in this amended bill of complaint, and the report and opinion attached hereto and made a part hereof as Exhibit A, are the result of the most painstaking consideration and care on the part of each individual member of this defendant.

This defendant avers that by the statute it has been authorized and required to perform certain duties; that in the distribution of the powers of government this defendant is required to determine, in cases like that heard by it (out of which the orders complained of in this case grew), what shall be the just and reasonable trans-
82 portation charge to be charged by carriers subject to said act for the future; that authority to determine that issue could not

be, under the Constitution of the United States, conferred upon this court, and, even if it could be so conferred, such power and authority has not been so conferred by any existing law. Defendant further avers that it is both the right and the duty of this court to protect these complainants against arbitrary and unlawful exercise of authority conferred upon this defendant. Yet, this court ought not, and will not, review the judgment and findings of this defendant unless it be made clearly to appear that the orders complained of transcend the pale of legitimate regulation and constitute such a violation of the constitutional rights of the carrier as to shock the conscience of a chancellor.

Defendant further avers that the establishment of a rate of transportation for the future involves the exercise of discretion and judgment; that Congress has attempted to establish in this defendant an expert tribunal for determining questions of this character; and that this court will not undertake to say whether, upon all the facts existing in this case, it would have arrived at a different conclusion upon the facts presented as to what the rates should be for the future.

83 XVII. Defendant denies the allegations of paragraph XVII, that the rates in effect on November 1 and 2, 1907, are lower than the rates charged for like service by any carrier in the United States, and lower than rates heretofore fixed by this defendant for like services. Defendant denies that the rates fixed by the orders of this defendant are unremunerative and confiscatory in any sense. Defendant avers, on the contrary, that the rates established by the orders complained of are higher than the rates voluntarily established by the carriers for the same transportation covering a long period of years. Defendant avers that the complainants herein during the last ten years have received from their operations as common carriers munificent returns upon the property invested, and that said returns upon the property aforesaid are far above the average received by carriers in other parts of the United States.

Defendant avers that it is unable to determine from the amended bill of complaint what the complainants regard as constituting cost of conducting transportation. Defendant denies that the rates fixed by the orders of this defendant are not, and will not be, sufficient to pay the cost of conducting transportation and any just or fair return upon the value of the property used in said transportation, no matter whether complainants refer to the mere cost of hauling the

84 traffic or whether complainants refer to the proportion of fixed charges properly attributable to said transportation and the cost of operating such transportation.

Defendant further avers that in considering what is a just and reasonable rate for the future, many things are to be considered; that one of these is the question as to what extent the traffic covered by the orders of this defendant shall contribute to the total profit of the complainants herein.

Defendant admits that the enforcement of the orders complained of involves to each of the complainants an amount in excess of two thousand dollars per year.

Defendant therefore avers in conclusion that in the making of the orders complained of this defendant considered every material fact and circumstance which it should have considered and failed to consider no material fact or circumstance which it should have considered.

XVIII. Defendant avers that the allegations of complainants' amended bill of complaint are vague and uncertain; that they do not set forth facts with sufficient certainty to show the conclusions which are therein stated, to the effect that the rates prescribed by his defendant in its orders complained of will require transportation at less than the cost of service, or at a loss to the carrier, or that
85 the same will be unremunerative, or that the same are unjust and unreasonable, or that the same are confiscatory; and that because of the failure on the part of the complainants to specify the particular items of returns from said rates and the particular expense incident to the transportation mentioned in the defendant's order, the defendant is unable to know what complainants expect to show at final hearing or otherwise, and on this account is not able more specifically to answer the general allegations, averments, and conclusions of the amended bill of complaint, and the defendant says that it ought not to be required to answer such allegations.

The defendant, therefore, denies each and all of the allegations of complainants' amended bill of complaint not otherwise specifically denied herein, and which defendant is advised is material or necessary to be answered; and says that the conclusions, inferences, and arguments are erroneous and without foundation, and that the rates which this defendant prescribed are in all things just and reasonable and will afford to each of the carriers complainant a just compensation in all instances for the service performed.

The defendant denies that the complainants are in anywise entitled to the relief, or any part thereof, prayed for in said amended bill of complaint, or any relief whatsoever, and the defendant claims the same advantage of this, its answer thereto, as if it had demurred to said amended bill of complaint, and prays to be dismissed with
86 its reasonable charges in this behalf most wrongfully sustained.

INTERSTATE COMMERCE COMMISSION,
By ——— ———,
Secretary thereof, thereunto duly authorized.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

L. M. WALTER,
Solicitor for Defendant.

WASHINGTON,
District of Columbia, ss:

EDWARD A. MOSELEY, being first duly sworn, says on oath that he is the Secretary of the defendant; that he knows the contents of the

foregoing demurrer and answer; that the said demurrer is not interposed for delay; and that the matters and things stated in the answer are true to the best of his knowledge and belief.

———— ————,
CHARLES C. HOUPT,
United States Attorney,
LUTHER M. WALTER,
Solicitors for Defendant.

Subscribed and sworn to before me this the ——— day of December, 1908.

———— ————, *Notary Public.*

87 EXHIBIT A.

88 No. 1329.
Pacific Coast Lumber Manufacturers' Association et al.
v.
Northern Pacific Railway Company et al.

No. 1335.
Southwest Washington Lumber Manufacturers' Association
v.
Northern Pacific Railway Company et al.

(Submitted March 20, 1908. Decided June 2, 1908.)

1. Petitions filed in these cases questioned the reasonableness of defendants' freight rates as advanced, effective November 1 and 2, 1907, on carload shipments of lumber, shingles, and other forest products from the Pacific northwest to points of destination in the East, South, and Southeast: *Held*, That the rates now in effect from points on defendants' lines in Washington, Oregon, Idaho, Montana, and British Columbia to all points in the territory west of a line running through and including Pembina and Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., Van Buren, Ark., and Galveston, Tex., are unreasonable and unjust to the extent that they exceed those that were in effect over the lines of the defendant carriers, respectively, on October 31, 1907; that the rates now in effect from said points of origin to points in the territory east of the territory above described are unreasonable and unjust to the extent that they exceed 5 cents per 100 pounds above the rates in effect October 31, 1907.

2. The rates in effect prior to the advances complained of had been in force for long periods of time, and the lumber trade had adjusted itself to the conditions obtaining under those rates. The defendants derive a large proportion of their revenues from the lumber traffic, and it clearly appears that they have not only earned large profits on their general business, but that the transportation of lumber under the old rates yielded a commensurate part thereof and a reasonable return for the service performed.

3. Where an advance is made in rates which have long been maintained and the evidence shows that the traffic affected is large, important, and constantly increasing the advance will be held unjust unless it is satisfactorily explained.

W. A. Wimbish, Austin E. Griffiths, George Dysart, and W. H. Abel for complainants.

James B. Kerr for Northern Pacific Railway Company and Great Northern Railway Company.

Hale Holden and James B. Kerr for Chicago, Burlington & Quincy Railroad Company.

89 W. W. Cotton, James B. Kerr, and F. C. Dillard for Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Union Pacific Railroad Company.

J. A. Twohey for Canadian Pacific Railway Company.

Herrick & Christiansen for Chicago Great Western Railway Company.

James B. Kerr for Bellingham Bay & British Columbia Railroad Company, Columbia & Puget Sound Railroad Company, and Port Townsend Southern Railroad Company.

Report of the commission.

Clements, Commissioner:

These cases involve the reasonableness of defendants' freight rates, as advanced, effective November 1 and 2, 1907, on carload shipments of timber and cedar, fir, hemlock, larch, pine, and spruce lumber and on shingles and other forest products from the Pacific northwest, including all points of origin on the several lines of defendant carriers in each of the States of Washington, Oregon, Idaho, and Montana and in British Columbia, to points of destination within States and Territories east, south, and southeast thereof. The cases were heard together and will be disposed of in one report.

In case No. 1329 complainants state that their petition is filed in behalf of themselves and all others similarly situated with respect to this controversy, and in both of the cases reparation is asked for damages resulting from the exaction of the alleged unreasonable rates.

These rates, which are now in effect, except in so far as they have been slightly modified in special instances by subsequent amendments and supplements, are published in Trans-Continental Freight Bureau, East Bound, Special Tariff, No. S. R. 963, I. C. C. No. 850, with Supplements 1 and 2, effective November 1, 1907, superseding Trans-Continental Freight Bureau, East Bound, Special Tariff, No. S. R. 662, I. C. C. No. 564; Local and Joint Tariff on Lumber, Shingles, etc., Great Northern I. C. C. No. A–2667, effective November 1, 1907; Local and Joint Tariff on Lumber, Shingles, etc., Nor. Pac. Ry. I. C. C. No. A–3432, effective November 2, 1907, superseding Nor. Pac. Ry. I. C. C. Nos. B–479 and A–3415.

Supplement No. 10 to Trans-Continental Freight Bureau, East Bound, Tariff No. "2–D," I. C. C. No. 812, effective November 1, referred to in the petition as carrying certain of the rates here in-

volved, was received for filing in the office of the commission on September 27, 1907, but was returned for the reason that it was not in the form required by the commission's rules. Subsequently Supplement No. 11 to said tariff was filed November 12, 1907, as superseding Supplement No. 9 and canceling Supplement No. 10. Supplements 12, 13, 14, 15, and 16 have been subsequently issued naming through rates to New York, Boston, and common points.

90 The rates involved are commodity rates embraced in the several rate schedules above mentioned. These schedules contain rates from points in each of the States of Washington, Oregon, Idaho, and Montana, and in British Columbia to points in other States and Territories. The advance in these rates accrues for the most part to the carriers performing the haul to such Mississippi River crossings and Chicago and points having similar adjustment. By the rate schedules above referred to the defendant carriers increased their rates for the transportation of shingles and certain kinds of timber, lumber, and other forest products from points of origin in the States of Washington, Oregon, Idaho, and Montana, and points in British Columbia to many points reached by them in other States to the east, south, and southeast, as definitely shown by reference to the rate schedules above stated and those in effect over the lines of defendant carriers on October 31, 1907, immediately prior to the effective date of the schedules above named.

Forest products, while including timber, lumber, and shingles, also include many comparatively minor articles, the rates on which are involved herein, and all are subdivided or classified by these defendants into groups of articles or commodities designated in the rate schedules mentioned as groups A, B, C, D, and E.

These schedules containing the advanced rates consist of some 380 pages in the tariff schedule proper and 214 pages in all of the supplements thereto. On account of their great volume it is impracticable to set forth in detail the amounts of sundry rates and the increases therein. For definiteness and certainty in respect thereto we have referred to the tariff schedules themselves for the specific rates involved and will deem this sufficient for the purpose of future reference hereinafter.

These rates vary in amount not from every point of origin to each point of destination according to distance, but the defendant carriers have established groups of points of origin on their respective lines in Washington, Oregon, Idaho, Montana, and British Columbia, from all of which points in a given group the rates are the same to any given destination on interstate shipments. There are three of these groups, designated as "Coast Rates Group," "Spokane Rates Group," and "Montana-Oregon Rates Group."

The Trans-Continental Freight Bureau is an agency of the principal transcontinental carriers, including several of the defendant carriers chiefly participating in the traffic involved in these cases, and others, for the publication of their rate schedules, joint and otherwise. Through this agency many of the rates complained of were concurrently filed with the commission, published, and made effective

on the same date, evidently pursuant to a previous understanding between the carriers parties thereto. In so far as the rates were separately filed by any of the carriers they became effective almost simultaneously with those filed by said bureau.

91 The groups of points of origin above referred to on the lines of each of the originating carriers defendants herein taking "Coast rates," "Spokane rates," and "Montana-Oregon rates," are as follows:

Coast rates.

Points on the Northern Pacific Railway in Washington and Oregon on the main line and branches from Portland, Oreg., and north to and including Sumas and Bellingham, Wash. Also points in Washington on the main line east of Tacoma to Easton, Wash. (85 miles), inclusive.

Points on the Great Northern Railway on main line and branches from Seattle, Wash., to Vancouver, British Columbia, inclusive. Also points in Washington on main line east of Seattle to Leavenworth, Wash. (142 miles), inclusive.

Points on the Oregon Railroad & Navigation Company in Oregon, Portland to Cascade Locks (45 miles), inclusive.

Points on the Southern Pacific Company, Portland and south to Ashland, Oreg., inclusive, except Donna, Marcola, Hyland, and Wendling, Oreg., which are located on a branch line and take a differential of 1¼ cents per 100 pounds higher than "coast rates."

Points on the Bellingham Bay & British Columbia Railroad, Bellingham, Wash., to Sumas, Wash., inclusive; also points east of Sumas to Glacier, Wash., inclusive.

Points on the Columbia & Puget Sound Railroad, Seattle to Franklin, Wash. (34 miles), inclusive.

Points on the Port Townsend Southern Railroad, Olympia, Wash., to Tenino, Wash., inclusive.

Points on the Tacoma Eastern Railroad, Tacoma, Wash., to Glenavon, Wash., inclusive.

Points in Oregon on the Corvallis & Eastern Railroad as follows: Kingston, Mill City, Philomath, and Shelburn.

Points on the Astoria & Columbia River Railroad, west of Portland, except Seaside, Oreg., which takes a differential of 2 cents per 100 pounds higher than "coast rates."

Points on the Washington & Great Northern Railway, namely, Chopaka, Circle, Molson, Hull, Nighthawk, Oroville, and Porters, Wash.

Points in Idaho on the Kootenai Valley Railway as follows: Copeland, Port Hill, Rickerds Spur, Ritzville, Shultes Spur, and Spur Track when routed via Great Northern Railway and connections, extending northward from Rexford, Mont., to Fernie, British Columbia, including the latter point.

Spokane rates.

Points on the Northern Pacific Railway in Washington west of Spokane and east of Easton, Wash. (except from Cleelum, Thorp, Ellensburg, and North Yakima, Wash., from which points the rates are 2½ cents per 100 pounds higher than "Spokane rates"). Also points on the main line and branches in Washington, Idaho, and Montana, from Spokane, Wash., to Evaro, Mont. (240 miles), inclusive.

92 Points on the Great Northern Railway, Spokane, Wash., and east thereof to Troy, Idaho (141 miles), inclusive. Also points north of main line on Kootenai Valley Railway (Great Northern Railway) from Ritzville, Wash., to Creston, British Columbia, via Great Northern Railway only. Also points located on the branch line.

Points on the Oregon Railroad & Navigation Company, Spokane, and points south thereof, to Garfield, Wash., also Moscow, Idaho, and points west of Tekoa, Wash., to Walla Walla, Wash., inclusive, and points east of Tekoa, Wash., to Burke and Mullen, Idaho, inclusive.

Points on the Spokane International Railway east of Spokane to Eastport, Idaho, including the latter point.

Points on the Coeur D'Alene & Spokane Railway in Washington and Idaho east of Spokane to and including Hayden Lake, Idaho.

Points on the Spokane & Inland Railway in Washington, located on Inland Division.

Montana-Oregon rates.

Points on the Northern Pacific Railway on main line east of Evaro, Mont., to Drummond, Mont., inclusive, and on branch line Missoula to Darby, Mont., inclusive.

Points on the Great Northern Railway located on main line east of Lupfer, Mont., Whitefish to Midvale, Mont., inclusive; also points on branch line Marion to Columbia Falls, Mont., inclusive. (Points on main line Libbey, Mont., to Lupfer, Mont., inclusive, take a differential of 1 cent per 100 pounds above "Montana-Oregon rates.")

Points on the Oregon Railroad & Navigation Company between Pendleton and Huntington, Oreg., as follows: Meacham to North Powder, Oreg., inclusive, also Baker City, Pleasant Valley, Elgin, and Imbler, Oreg.

Points on the Oregon Short Line Railroad in Idaho, as follows: Boise, Nampa, Payette, and Weiser.

Trans-Continental Freight Bureau, East-Bound, Tariff I. C. C. No. 850, above referred to, does not give an outline or territorial description of the points taking "coast rates," "Spokane rates," and "Montana-Oregon rates," but states specifically the points from which the rates apply, arranged in alphabetical order. It is found that there are some points which are included within the limits of the above descriptions which are not named in the tariff, and from which there appear to be no specific rates. This is especially true of

points on the Oregon Railroad & Navigation Company. In other cases points are named in the tariff which do not take "coast rates," "Spokane rates," or "Montana-Oregon rates," but are made
93 certain differentials higher than the rates so designated. These differential points, except as herein shown, are, in most cases, located on small roads or branch lines.

In view of the impracticability, for the reasons stated, of naming each and every rate affected, we have prepared from the schedules the following statements as fairly illustrative of the nature and extent of the increases under consideration:

Statement showing rates on lumber, carloads, from coast rate points, Spokane rate points, Montana-Oregon rate points to the following points, in force November 1, 1907; also the rates in force prior to November 1, 1907, via Northern Pacific Railway and Great Northern Railway.

[Rates in cents per 100 pounds.]

To—	From coast rate points.				From Spokane rate points.				From Montana-Oregon rate points.			
		Lumber.				Lumber.				Lumber.		
	Shingles.	Cedar.	Fir.	Spruce.	Shingles.	Cedar.	Fir.	Spruce.	Shingles.	Cedar.	Fir.	Spruce.
Pocatello, Idaho:												
November 1, 1907	55	55	40	40	47½	42½	37½	37½	37½	32½	27½	27½
Prior to November 1	45	45	40	40	37½	37½	37½	37½	27½	27½	27½	27½
Salt Lake, Utah:												
November 1, 1907	60	55	45	45	50	45	40	40	40	35	30	30
Prior to November 1	50	50	45	45	40	40	40	40	30	30	30	30
Billings, Mont.:												
November 1, 1907	52½	52½	40	40	39	38	34½	34½	(a)	(a)	(a)	(a)
Prior to November 1	47½	47½	35	35	34½	34½	34½	34½	(a)	(a)	(a)	(a)
Cheyenne, Wyo.:												
November 1, 1907	60	60	50	50	55	50	45	45	50	45	40	40
Prior to November 1	60	50	40	40	50	40	40	40	50	35	35	35
Denver, Colo.:												
November 1, 1907	60	60	50	50	55	50	45	45	50	45	40	40
Prior to November 1	60	50	40	40	50	40	40	40	50	35	35	35
Wahpeton, N. Dak.:												
November 1, 1907	60	60	50	50	55	50	45	45	53	48	43	43
Prior to November 1	50	50	40	40	50	45	40	40	(a)	(a)	(a)	(a)
Aberdeen, S. Dak.:												
November 1, 1907	60	60	50	50	55	50	45	45	53	48	43	43
Prior to November 1	50	50	40	40	50	45	40	40	(b)	(b)	(b)	(b)
Salina, Kans.:												
November 1, 1907	65	65	55	55	60	55	50	50	53	48	43	43
Prior to November 1	60	60	50	50	60	50	50	50	60	45	40	40
Kearney, Nebr.:												
November 1, 1907	65	65	55	55	60	55	50	50	53	48	43	43
Prior to November 1	60	60	50	50	60	50	45	45	60	45	40	40
Omaha, Nebr.:												
November 1, 1907	65	65	55	55	60	55	50	50	53	48	43	43
Prior to November 1	60	60	50	50	60	50	45	45	60	45	40	40
Kansas City, Mo.:												
November 1, 1907	65	65	55	55	60	55	50	50	53	48	43	43
Prior to November 1	60	60	50	50	60	50	50	50	60	45	40	40
Minneapolis, Minn.:												
November 1, 1907	60	60	50	50	55	50	45	45	53	48	43	43
Prior to November 1	50	50	40	40	50	45	40	40	50	45	40	40
Madison, Wis.:												
November 1, 1907	71	70	60	60	66	60	55	55	64	58	53	53
Prior to November 1	61	60	50	50	61	55	50	50	61	55	50	50
Des Moines, Iowa:												
November 1, 1907	72	70	60	60	67	60	55	55	64½	58	53	53
Prior to November 1	62	60	50	50	62	55	50	50	62	55	50	50
Chicago, Ill.:												
November 1, 1907	70	70	60	60	65	60	55	55	63	58	53	53
Prior to November 1	60	60	50	50	60	55	50	50	60	55	50	50
St. Louis, Mo.:												
November 1, 1907	70	70	60	60	65	60	55	55	62½	57½	52½	52½
Prior to November 1	62½	62½	52½	52½	62½	57½	52½	52½	62½	54½	49½	49½

a No published rates.

b No rate via Great Northern Railway.

Trans-Continental I. C. C. No. 564–850.
Northern Pacific I. C. C. No. B–479, 3415, and 3432.

94 *Statement showing rates, in cents, per ton per mile on lumber, carloads, from Seattle and Spokane, Wash., and Missoula, Mont.*

To—	From Seattle, Wash.				From Spokane, Wash.				From Missoula, Mont.			
		Rate per ton-mile.				Rate per ton-mile.				Rate per ton-mile.		
	Distance.	Shingles.	Cedar lumber.	Fir and spruce lumber.	Distance.	Shingles.	Cedar lumber.	Fir and spruce lumber.	Distance.	Shingles.	Cedar lumber.	Fir and spruce lumber.
	Miles.	*Cts.*	*Cts.*	*Cts.*	*Miles.*	*Cts.*	*Cts.*	*Cts.*	*Miles.*	*Cts.*	*Cts.*	*Cts.*
Pocatello, Idaho	916				751				374			
November 1, 1907		1.201	1.201	0.873		1.264	1.131	0.998		2.006	1.738	1.471
Prior to November 1		.983	.983	.873		.998	.998	.998		1.471	1.471	1.471
Salt Lake City, Utah	1,087				922				545			
November 1, 1907		1.104	1.012	.828		1.085	.976	.808		1.468	1.284	1.101
Prior to November 1		.920	.920	.828		.868	.868	.868		1.101	1.101	1.101
Billings, Mont	1,021				621				363			
November 1, 1907		1.028	1.028	.784		1.255	1.223	1.111				
Prior to November 1		.930	.930	.686		1.111	1.110	1.110				
Cheyenne, Wyo	1,468				1,303				926			
November 1, 1907		.817	.817	.681		.844	.768	.691		1.080	.972	.864
Prior to November 1		.817	.681	.545		.768	.614	.614		1.080	.756	.756
Denver, Colo	1,574				1,409				1,032			
November 1, 1907		.763	.763	.635		.781	.710	.639		.969	.872	.775
Prior to November 1		.763	.635	.508		.710	.568	.568		.969	.678	.678
Wahpeton, N. Dak	1,633				1,309				1,055			
November 1, 1907		.734	.734	.612		.840	.764	.688		1.005	.910	.815
Prior to November 1		.612	.612	.490		.764	.688	.611				
Aberdeen, S. Dak	1,780				1,441				1,248			
November 1, 1907		.674	.674	.562		.763	.694	.625		.849	.769	.689
Prior to November 1		.562	.562	.449		.694	.625	.555				
Salina, Kans	2,027				1,862				1,400			
November 1, 1907		.641	.641	.543		.644	.591	.537		.757	.686	.614
Prior to November 1		.592	.592	.493		.644	.537	.537		.857	.643	.571
Kearney, Nebr	1,717				1,623				1,246			
November 1, 1907		.757	.757	.641		.739	.677	.616		.851	.770	.680
Prior to November 1		.698	.698	.582		.739	.616	.544		.963	.722	.642
Omaha, Nebr	1,913				1,513				1,255			
November 1, 1907		.859	.859	.727		.793	.727	.661		.845	.765	.685
Prior to November 1		.793	.793	.661		.793	.661	.595		.956	.717	.637
Kansas City, Mo	2,055				1,655				1,397			
November 1, 1907		.633	.633	.535		.725	.664	.604		.759	.687	.616
Prior to November 1		.584	.584	.486		.725	.604	.604		.859	.644	.573
Minneapolis, Minn	1,818				1,479				1,244			
November 1, 1907		.660	.660	.550		.743	.676	.608		.852	.722	.691
Prior to November 1		.550	.550	.440		.676	.608	.541		.804	.724	.643
Madison, Wis	2,100				1,761				1,526			
November 1, 1907		.677	.067	.571		.749	.682	.625		.839	.760	.694
Prior to November 1		.580	.571	.476		.692	.625	.568		.799	.721	.655
Des Moines, Iowa	2,059				1,659				1,401			
November 1, 1907		.747	.680	.583		.807	.723	.662		.921	.828	.757
Prior to November 1		.602	.583	.485		.747	.662	.662		.885	.785	.714
Chicago, Ill	2,239				1,900				1,665			
November 1, 1907		.695	.695	.579		.684	.632	.579		.757	.697	.637
Prior to November 1		.536	.536	.446		.632	.579	.526		.721	.661	.601
St. Louis, Mo	2,332				1,992				1,674			
November 1, 1907		.657	.657	.563		.673	.621	.569		.746	.686	.627
Prior to November 1		.586	.586	.492		.647	.595	.544		.746	.651	.591

As affording a basis of comparison with the foregoing we include below a statement showing rates on lumber, carloads, from certain important yellow pine shipping points in the South to some of the principal consuming markets of the Middle West, which constitute a common field for the sale of southern yellow pine lumber and lumber produced in the Pacific Northwest. This table also shows the distances and rates per ton per mile between the points mentioned.

95 *Statement showing distances, and rates per 100 pounds and per ton per mile.*

From—	To East St. Louis.			To Chicago.			To Kansas City.			To St. Paul.		
	Distance.	Rate.	Rate per ton-mile.	Distance.	Rate.	Rate per ton-mile.	Distance.	Rate.	Rate per ton-mile.	Distance.	Rate.	Rate per ton-mile.
	Miles.	*Cts.*	*Cts.*	*Miles.*	*Cts.*	*Cts.*	*Miles*	*Cts.*	*Cts.*	*Miles.*	*Cts.*	*Cts.*
New Orleans, La	696	18	0.517	912	24	0.526	880	23	0.523	1,275	30	0.471
McComb, Miss	600	18	.600	817	24	.588	880	23	.523	1,179	30	.509
Jesup, Ga	847	20	.472	969	26	.537	1,124	30	.534	1,379	33	.479
Shreveport, La	593	19½	.658	700	26	.743	560	23	.821	1,123	32	.570
Tyler, Tex	689	19½	.566	913	26	.570	969	23	.475	1,268	32	.505

Short line distances only are stated in these tables. In some instances the lumber as actually handled moves over somewhat longer routes, but it is impracticable to arrive at the exact distances which the traffic is in fact hauled. However, the mileages above given are approximately correct and may be fairly used.

Prior to the effective date of the first commodity tariff carrying rates on lumber, filed by the Trans-Continental Freight Bureau on behalf of the lines represented by it, April 15, 1905, the rates were published from time to time in the individual issues of the several roads, under which a somewhat different classification had been adopted on the various kinds of lumber and forest products from that which has been in force since April 15, 1905, as will be seen by comparison of the statement following with those preceding. This statement is inserted as being fairly illustrative of the course of these rates in the past, having been taken from the individual tariffs of the Great Northern and Northern Pacific, the two most important lumber carrying roads from this territory, showing rates from Seattle and Spokane, and points taking the same rates, to a number of representative destinations.

Statement showing rates on lumber and shingles, carload, from Seattle and Spokane, Wash., and points taking same rates to points named below, on the dates specified.

[Rates in cents per 100 pounds.]

To—	From Seattle.			From Spokane.		
	Shingles.	Lumber, except fir.	Fir.	Shingles.	Lumber, except fir.	Fir.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Salt Lake City, Utah:						
February, 1901	50	50	50	50	50	50
August 3, 1901	50	50	45	50	50	45
Cheyenne, Wyo.:						
September 9, 1898	60	60	60	60	60	60
April 25, 1900	60	60	60	60	60	60
February 19, 1901	60	60	60	60	60	60
August 3, 1901	60	50	40	60	50	40
Denver, Colo.:						
September 9, 1898	60	60	60	60	50	60
April 25, 1900	60	60	60	60	50	60
February 19, 1901	60	60	60	60	50	60
August 3, 1901	60	50	40	60	50	40

Statement showing rates on lumber and shingles, carload, from Seattle and Spokane, Wash., and points taking same rates to points named below, on the dates specified—Continued.

To—	From Seattle.			From Spokane.		
	Shingles.	Lumber, except fir.	Fir.	Shingles.	Lumber, except fir.	Fir.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
96 Aberdeen, S. Dak.:						
February 20, 1893	55	55	50	(a)	(a)	(a)
April 10, 1899	50	50	40	50	50	40
April 15, 1900	50	50	40	50	50	40
July 9, 1902	50	50	40	50	50	40
Salina, Kans.:						
September 9, 1898	62½	62½	62½	62½	62½	62½
January 30, 1899	62½	62½	52½	62½	62½	52½
April 25, 1900	62½	62½	62½	62½	62½	62½
February 19, 1901	62½	62½	62½	62½	62½	62½
Kearney, Nebr.:						
September 9, 1898	60	60	60	60	60	60
January 3, 1899	60	60	50	60	60	50
April 25, 1900	60	60	60	60	60	60
February 19, 1901	60	60	60	60	60	60
Omaha, Nebr.:						
July 27, 1887	60	60	60	(a)	(a)	(a)
March 1, 1888	60	60	60	(a)	(a)	(a)
August 1, 1888	60	60	60	(a)	(a)	(a)
January 1, 1889	60	60	60	(a)	(a)	(a)
February 16, 1890	55	55	55	(a)	(a)	(a)
June 3, 1891	55	55	55	(a)	(a)	(a)
February 20, 1893	55	55	55	(a)	(a)	(a)
February 5, 1895	60	60	60	60	60	60
September 9, 1898	60	60	60	60	60	60
January 30, 1899	60	60	50	60	60	50
April 25, 1900	60	60	60	60	60	60
February 19, 1901	60	60	60	60	60	60
November 4, 1901	60	60	50	60	50	45
Kansas City, Mo.:						
July 27, 1887	60	60	60	(a)	(a)	(a)
March 1, 1888	65	65	65	(a)	(a)	(a)
August 1, 1888	60	60	60	(a)	(a)	(a)
January 1, 1889	60	60	60	(a)	(a)	(a)
February 16, 1890	55	55	55	(a)	(a)	(a)
June 10, 1893	55	55	55	(a)	(a)	(a)
December 13, 1893	60	60	50	(a)	(a)	(a)
March 10, 1894	60	60	50	(a)	(a)	(a)
September 9, 1898	62½	62½	62½	62½	62½	62½
January 30, 1899	60	60	50	60	60	50
April 25, 1900	62½	62½	62½	62½	62½	62½
February 19, 1901	62½	62½	62½	62½	62½	62½
Minneapolis, Minn.:						
July 27, 1887	60	60	60	(a)	(a)	(a)
March 1, 1888	60	60	60	(a)	(a)	(a)
August 1, 1888	60	60	60	(a)	(a)	(a)
January 1, 1889	55	55	55	(a)	(a)	(a)
February 16, 1890	55	55	55	(a)	(a)	(a)
March 10, 1894	50	50	40	(a)	(a)	(a)
January 24, 1899	50	50	40	50	50	40
March 14, 1899	50	50	40	50	50	40
April 19, 1900	50	50	40	50	50	40
November 30, 1900	50	50	40	50	50	40
April 3, 1901	50	50	40	50	50	40
June 15, 1903	50	50	40	50	50	40
Madison, Wis.:						
April 11, 1899	60	60	50	60	60	50
Des Moines, Iowa:						
December 16, 1891	57½	57½	57½	(a)	(a)	(a)
December 3, 1892	57½	57½	57½	(a)	(a)	(a)
March 10, 1894	60	60	50	(a)	(a)	(a)
January 30, 1899	60	60	50	60	60	50
St. Louis, Mo.:						
June 30, 1888	60	60	60	(a)	(a)	(a)
January 1, 1889	57½	57½	57½	(a)	(a)	(a)
February 16, 1890	57½	57½	57½	(a)	(a)	(a)
June 3, 1891	60	60	60	(a)	(a)	(a)
September 6, 1891	57½	57½	57½	(a)	(a)	(a)
March 5, 1892	57½	57½	57½	(a)	(a)	(a)
April 25, 1893	57½	57½	50	(a)	(a)	(a)
September 2, 1896	62½	62½	52½	(a)	(a)	(a)
January 30, 1899	62½	62½	52½	62½	62½	52

a No specific rates from Spokane. Tariff contains intermediate clause which signifies that the Seattle rates will apply from Spokane as maxima.

Statement showing rates on lumber and shingles, carload, from Seattle and Spokane, Wash., and points taking same rates to points named below, on the dates specified—Continued.

	To—	From Seattle.			From Spokane.		
		Shingles.	Lumber, except fir.	Fir.	Shingles.	Lumber, except fir.	Fir.
97	Chicago, Ill.:	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
	July 27, 1887	60	60	60	(a)	(a)	(a)
	April 1, 1888	60	60	60	(a)	(a)	(a)
	August 1, 1888	60	60	60	(a)	(a)	(a)
	January 1, 1889	60	60	60	(a)	(a)	(a)
	February 16, 1890	60	60	60	(a)	(a)	(a)
	June 3, 1891	60	60	60	(a)	(a)	(a)
	March 5, 1892	60	60	60	(a)	(a)	(a)
	December 3, 1892	60	60	60	(a)	(a)	(a)
	February 20, 1893	60	60	60	(a)	(a)	(a)
	March 10, 1894	60	60	50	(a)	(a)	(a)
	October 16, 1898	60	60	50	(a)	(a)	(a)
	April 11, 1899	60	60	50	60	60	50
					60	60	50

a No specific rates from Spokane. Tariff contains intermediate clause which signifies that the Seattle rates will apply from Spokane as maxima.

As will be noted from the foregoing table, the rates on lumber have fluctuated to some extent during the period shown, but these fluctuations do not appear to have been coincident with or dependent upon any fluctuations in the volume of the traffic, but would seem to be due to the exigences of the carriers in competing for and making rates to secure the business. On the contrary, it appears that, notwithstanding the vast increase in the volume of this traffic since it began to move, as will be shown in a subsequent statement, the rates in many instances were higher just before these last advances than they had been prior thereto for considerable periods of time when the volume of the traffic was much less than at the time of the increases complained of, and in some noticeable instances they are now materially higher than they were twenty years ago.

An examination of the tariffs shows that there has been a steady increase in the carload minimums prescribed for this traffic. Up to 1894 the minimum was usually 20,000 pounds, since which time there has been a gradual increase in the minimums and in the capacity of the cars. In 1906 the minimum weight was changed to be governed by cubical capacity of the car and ranged from 23,000 to 67,000 pounds. It is claimed by complainants that the increase in the minimum loading requirements has amounted to an advance of from $70 to $100 per car in the charges. It is conceded that the average loading in 1906 and 1907 was approximately 58,000 pounds per car. It is not open to question, therefore, that the earnings per car under the present minimum rules are considerably more than in former years, but it must also be borne in mind that the larger and more modern equipment is heavier and costs more to construct.

The principal lines over which this traffic moves have been more expensive to construct and operate than the lines leading from the South to Chicago and other competitive points in that region.

98 In the year 1890 there was a decided predominance in the empty car movement east bound, this amounting at that time to about 161.17 per cent over the west bound empty car movement on the Northern Pacific Railway. In 1891 the predominance of the east bound empty car movement over west bound had decreased to 72.17 per cent, and in 1892 it had further decreased to 4.35 per cent. The statement submitted by the Northern Pacific Railway shows that in 1895 and during all subsequent years down to 1907 conditions have been reversed and during this entire period there has been a large predominance of the west bound empty car movement over east bound. This result is not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East. The establishment of manufactories of finished products in the West has also doubtless diminished the volume of manufactured products moving from the East to the West, and this change in the conditions is also demonstrated in the statement filed by the Northern Pacific Railway showing that in 1890 the predomination of west bound loaded car mileage over east bound amounted to 57.23 per cent, while in 1906 the predomination of east bound loaded car mileage over west bound amounted to 43.40 per cent and in 1907 to 3.20 per cent.

For the year ending June 30, 1907, the percentage of tonnage consisting of the products of mines out of the total number of tons carried on the Great Northern Railway was 51.75 and of forest products 14.80. On the Northern Pacific the percentage of mine products out of the total tonnage was 21.05 and of forest products 37.38. It appears that the empty car movement westward predominates to a greater extent on the Great Northern road and other lines on which the products of the mines constitute a greater proportion of the traffic handled than forest products than on the Northern Pacific, which hauls a much larger percentage of forest products than most of the other carriers.

Timber and lumber in carloads is everywhere regarded and treated as a low-grade commodity of freight, bearing relatively low transportation rates as compared with other kinds of traffic generally. This is true, among other reasons, because of its comparatively low value in proportion to its weight and bulk, which makes it susceptible of heavy loading, approximating or equaling the capacity of cars. It ordinarily moves in large and steady volume, is not susceptible to injury by weather or much risk by fire or other causes, is loaded and unloaded by the consignors and consignees, and does not require expeditious movement. The products here involved are sold in the principal markets to which they are consigned in competition
99 with like products from the Southern States produced from yellow pine, cypress, and other woods.

Aside from cedar, there is but little difference in the selling prices of these products from the Northwest and from the South. Formerly

these products both from the Northwest and from the South met the competition of white pine and other products of Michigan, Wisconsin, and other territory in that region, and they still meet this to some extent, but these last-named sources of supply are so far exhausted that white pine is not now formidable as a competitor. As these white-pine forests have been exhausted and as the demand for these products has increased with the development of the country and the settlement of the prairie States, the value of the forest products of the Pacific Northwest has greatly advanced in recent years. In consequence of these conditions the value of "stumpage" both in the Northwest and in the South has also greatly increased during the same period.

There are varying statements in the record respecting the number of lumber-producing plants, the amount of the investments therein, and the number of men employed. It is perhaps impossible to make an accurate statement concerning these matters from the conflicting data contained in the record, but it does clearly appear that there are many hundreds of mills in which are invested millions of dollars and that many thousands of men are employed in the operation of the plants and connected therewith. The annual output and the value thereof has been very great, and up to the year 1907, and for a number of years, as will be shown in succeeding statements, the output has been rapidly and constantly increasing, so that in recent years this business has been the most important industry in that region.

During the summer of 1907 it appears to have become understood among those interested in the lumber trade that the then existing rates were to be increased. The industry appears to have immediately begun, in some degree at least, to feel the effects of this unsettled rate situation. This was shown by the disposition of purchasers at destination points to postpone the placing of orders and in some instances those which had been placed were canceled. It is doubtless true that this condition in the lumber business was also partially due to the money stringency which developed about the same time these advances in rates became effective. The lumber industry has in recent months been greatly depressed and a large percentage of the mills have been shut down and are not now in operation. It is contended by complainants that this condition, while due in part to the general condition of depression throughout the country, is to a large extent due to the advances in rates. On the other hand, it is contended by defendants that this condition of the industry is due altogether to the general business depression.

100 While it is true that the cost of operating the railroads engaged in this traffic has materially increased in recent years, it is also true that the expense of operation of the mills has increased proportionately.

There can be no doubt that the present plight of this industry is to a great extent due to the general conditions referred to. On the other hand, it is apparent that the very material increases in the rates have in a substantial degree contributed to the present condition of the

industry. Some of the increases amounted to as much as 25 per cent of the old rates, resulting in a gross increase of $60 in freight charges on a carload of lumber weighing 60,000 pounds between points where the rate in effect before the increase would have amounted to $240. On a larger load the increase per car would, of course, be still more. This illustration, however, is made on the basis of the greatest increase shown in these tariffs, but the average increase is probably from 12½ to 15 per cent. It is claimed by the complainants that the advance averages $2.75 per 1,000 feet and that this exceeds the average profit to the lumber manufacturer.

The following statement shows for the three years named the total tons of freight, earning revenue, carried by the roads named; also number of tons of forest products carried and the percentages of these products to the whole tonnage. These are the carriers most interested in the advances of rates under consideration.

Name of road.	Tons of freight, earning revenue, carried.	Forest products.	
		Tons carried.	Percentage of total tonnage.
Northern Pacific Ry. Co.:			
1894 [a]	3,286,474	793,345	24.14
1903	12,791,717	5,090,387	39.79
1907	16,741,470	6,257,557	37.38
Great Northern Ry. Co.:			
1894	2,600,862	435,760	16.75
1903	13,819,429	2,889,699	20.92
1907	18,226,006	2,699,324	14.80
Chicago, Burlington & Quincy R. R. Co.:			
1894	10,637,385	[b]	[b]
1903	19,216,612		
1907	25,077,910		
Union Pacific R. R. Co.:			
1894 [c]	4,020,058	146,255	3.64
1903	5,760,548	332,858	5.78
1907	8,830,686	694,858	7.86
Oregon R. R. & Navigation Co.:			
1894 [d]	638,750	106,183	16.62
1903	2,350,500	685,567	29.05
1907	3,442,651	1,041,262	30.25
Oregon Short Line R. R. Co.:			
1894 [e]	1,087,950	62,349	5.73
1903	3,566,004	458,493	12.86
1907	5,138,513	741,271	14.43
Canadian Pacific Ry. Co.:			
1894	4,023,806	1,121,249	27.87
1903	10,180,847	2,011,620	19.76
1907	15,733,306	3,034,915	19.29
Chicago & Northwestern Ry. Co.:			
1894	12,858,820	1,797,755	13.98
1903	30,498,440	4,206,042	13.79
1907	37,579,539	5,570,386	14.82

[a] Report of receivers of Northern Pacific R. R. Co.
[b] Not reported separately.
[c] Report of Union Pacific Ry. Co.
[d] Report of Oregon Short Line & Utah Northern Ry. Co., lessee.
[e] Report of Oregon Short Line & Utah Northern Ry. Co., reorganized as Oregon Short Line R. R. Co., February 1, 1897.

101 Following is a statement showing net earnings of each system and per mile of line, net income, dividends declared, and surplus from operations of the same carriers for each of the ten years immediately preceding June 30, 1907. It also appears from the reports of some of these carriers that they have expended large sums

from their earnings in permanent improvements and betterment of their properties during this period, which have been charged to operating expenses and deducted from their earnings before showing their net incomes, as shown in the statement.

	Mileage operated, single track.	Net earnings.		Net income.	Total amount of dividends declared.	Surplus from operations of year.
		Amount.	Per mile of line.			
Northern Pacific Ry. Co.:						
1907	5,810.16	$30,845,515.53	$5,666.31	$23,473,929	$10,850,000	$12,623,929
1906	5,781.99	30,103,043.37	5,573.46	16,392,520	10,850,000	5,542,520
1905	5,676.26	23,889,127.18	4,494.70	13,866,932	10,850,000	3,016,932
1904	5,618.88	22,265,031.61	4,231.16	12,229,311	10,849,989	1,379,322
1903	5,426.23	22,085,011.98	4,320.58	11,724,074	10,074,943	1,649,131
1902	5,375.61	20,073,965.83	3,999.31	10,047,232	8,499,946	1,547,286
1901	5,284.13	15,920,840.01	3,121.65	7,202,619	6,200,000	1,002,619
1900	5,036.99	15,626,689.41	3,314.82	6,483,819	5,400,000	1,083,819
1899	4,887.17	13,696,221.54	2,991.55	5,633,283	4,600,000	1,033,283
1898	4,524.45	12,584,347.40	2,884.99	5,897,875	3,000,000	2,897,875
Great Northern Ry. Co.:						
1907	5,335.35	20,761,168.80	3,972.30	12,625,365	10,469,662	2,155,703
1906	5,183.11	23,361,145.46	4,535.65	14,333,090	9,148,521	5,184,569
1905	5,018.38	20,423,324.04	4,111.40	13,831,236	8,693,860	5,137,376
1904	4,888.53	18,207,516.82	3,743.36	12,116,107	8,683,925	3,432,182
1903	4,814.90	19,434,300.02	4,114.81	12,807,952	8,673,973	4,133,979
1902	4,551.25	14,359,513.76	3,454.77	10,342,911	8,225,921	2,116,990
1901	4,054.89	8,851,675.22	2,180.08	6,897,309	6,897,309	None.
1900	4,076.37	10,370,620.47	2,538.65	8,626,541	6,408,777	2,217,764
1899	4,094.08	9,714,648.60	2,411.44	5,638,226	3,851,034	1,787,192
1898	3,859.95	9,376,354.58	2,432.75	3,571,709	1,500,000	2,071,709
Chicago, Burlington & Quincy R. R. Co.:						
1907	8,875.07	23,520,812.34	2,653.70	13,141,931	7,758,737	5,383,194
1906	8,677.02	22,758,224.45	2,643.77	12,852,919	7,758,737	5,094,182
1905	8,561.64	23,683,688.59	2,769.13	13,829,905	7,758,737	6,071,168
1904	8,326.16	22,630,502.98	2,719.18	12,943,111	7,758,737	5,184,374
1903	8,306.75	23,905,157.49	2,878.39	13,395,047	7,758,455	5,636,592
1902	7,971.13	19,360,888.44	2,437.98	10,040,064	7,475,063	2,565,001
1901	7,789.46	17,272,517.28	2,227.81	8,159,520	6,652,557	1,506,963
1900	6,412.48	14,202,599.57	2,250.64	8,093,631	5,820,678	2,273,953
1899	6,230.93	13,286,787.94	2,243.64	6,852,210	5,238,371	1,613,839
1898	5,859.70	12,740,194.82	2,174.21	5,215,580	3,690,126	1,525,454
Union Pacific R. R. Co.:						
1907	3,031.41	19,678,798.80	6,547.99	27,932,022	23,531,012	4,401,010
1906	2,955.45	17,620,776.06	5,962.13	19,249,819	19,533,324	a 283,505
1905	2,955.45	16,165,393.71	5,468.38	15,051,010	11,087,014	3,963,996
1904	2,955.70	14,640,363.51	4,953.26	12,088,376	8,333,500	3,754,876
1903	2,955.70	11,488,641.92	3,885.65	8,769,093	8,333,084	436,009
1902	2,941.84	12,793,205.70	4,271.52	8,038,356	8,186,634	a 148,278
1901	3,033.08	11,040,176.54	3,666.80	8,304,365	7,979,504	324,771
1900	2,967.80	10,507,540.83	3,594.23	8,137,811	7,303,628	834,183
1899	2,848.38	9,071,606.79	3,746.12	6,583,368	3,750,000	2,833,368
1898 b	1,894.29	2,709,898.71 4,628,511.21	1,465.32 2,539.94	1,302,741	.....	1,302,741
Oregon R. R. & Navigation Co.:						
1907	1,245.82	5,972,933.93	4,794.42	5,793,784	440,000	5,353,784
1906	1,130.58	6,072,350.40	5,371.00	5,597,153	440,000	5,157,153
1905	1,130.58	5,296,616.70	4,662.89	4,618,561	440,000	4,178,561
1904	1,123.32	4,749,046.55	4,227.09	3,932,243	440,000	3,492,243
1903	1,123.32	5,111,386.88	4,553.21	4,265,327	440,000	3,825,327
1902	1,112.16	4,403,193.91	3,967.73	3,490,582	440,000	3,050,582
1901	1,093.59	3,856,344.48	3,526.32	2,795,506	440,000	2,355,506
1900	1,093.59	3,660,787.85	3,434.00	2,498,824	440,000	2,058,824
1899	1,059.35	2,871,057.50	2,710.21	1,652,827	440,000	1,212,827
1898	1,059.35	2,805,503.10	2,648.41	1,753,855	790,000	963,855
102 Oregon Short Line R. R. Co.:						
1907	1,407.64	9,843,780.77	7,064.53	11,141,824	8,238,030	2,903,794
1906	1,112.37	8,137,171.25	7,316.61	6,673,662	.....	6,673,662
1905	1,127.68	7,350,278.05	6,628.02	3,417,950	.....	3,417,950
1904	1,122.65	6,745,183.17	6,033.94	863,879	.....	863,879
1903	1,516.05	7,089,072.58	4,954.05	3,740,770	.....	3,740,770
1902	1,438.94	6,097,512.31	4,237.50	3,435,802	.....	3,435,802
1901	1,439.00	5,266,753.36	3,676.68	2,586,496	.....	2,586,496
1900	1,438.40	4,754,659.84	3,305.52	1,838,839	.....	1,838,839
1899	1,438.44	3,121,259.94	2,169.89	346,364	.....	346,364
1898	1,438.44	3,085,080.53	2,153.46	158,995	.....	158,995

a Deficit.

b Report for five months ending June 30, 1898.

	Mileage operated, single track.	Net earnings.		Net income.	Total amount of dividends declared.	Surplus from operations of year.
		Amount.	Per mile of line.			
Canadian Pacific Ry. Co.:						
1907	9,153.90	$26,027,715.82	$2,992.26	$19,156,034	$8,404,295	$10,751,739
1906	8,776.90	23,508,723.45	2,713.73	16,592,216	7,646,800	8,945,416
1905	8,508.00	15,877,256.20	1,868.28	9,105,686	6,525,733	2,579,953
1904	8,352.10	14,538,565.74	1,744.00	8,318,277	6,373,407	1,944,870
1903	7,748.40	16,101,106.67	2,078.00	10,071,461	5,010,920	5,060,541
1902	7,587.80	14,309,488.83	1,885.86	7,709,914	4,496,840	3,213,074
1901	7,503.20	12,310,574.87	1,627.67	5,736,965	4,448,173	1,288,792
1900	7,467.40	12,628,081.29	1,691.09	7,875,258	4,204,840	3,670,418
1899	6,951.50	11,325,046.80	1,628.86	4,883,778	3,072,709	1,811,069
1898	6,567.70	10,809,127.00	1,645.80	4,378,999	2,805,873	1,575,125
Chicago & Northwestern Ry. Co.:						
1907	7,622.91	24,089,905.90	3,160.45	15,740,506	7,910,178	7,830,388
1906	7,453.58	23,500,578.80	3,175.57	8,800,553	6,483,614	2,316,639
1905	7,408.13	19,184,040.34	2,589.59	5,817,822	5,174,924	642,898
1904	7,411.77	17,819,630.12	2,404.09	5,389,741	5,174,924	224,817
1903a	7,365.63	18,532,168.51	2,879.13	5,543,431	4,862,014	681,417
1902	5,930.26	17,595,469.07	3,166.28	5,887,773	4,529,368	1,358,305
1901	5,585.53	17,390,217.50	3,123.46	5,752,037	5,944,394	1,807,643
1900	5,571.23	17,002,849.24	3,240.98	5,457,092	3,914,324	1,542,668
1899	5,085.02	14,604,558.15	2,880.23	7,518,377	3,523,270	3,995,107
1898	5,085.02	13,319,604.02	2,622.30	5,670,835	3,719,824	2,140,012

a The Fremont, Elkhorn & Missouri Valley R. R. (1,365.76 miles) was purchased by and merged in the Chicago & Northwestern Ry., February 28, 1903.

A comparison of the rates from the west with those applying on yellow-pine lumber from southern producing points, covering substantially similar distances, shows that these western rates yield greater revenue per ton per mile than the rates from the south. The rates in effect prior to the advances complained of had been in force for long periods of time and in a few instances the carriers had voluntarily maintained rates lower than those in effect immediately prior to these advances. The lumber trade had adjusted itself to the conditions obtaining under those rates, so that the vast interests affected were in a large measure dependent upon the continuance thereof. The defendants derive a large proportion of their revenues from the lumber tarffic, and it clearly appears that they have not only earned large profits on their general business, but that the transportation of lumber under the old rates yielded a commensurate part thereof and a reasonable return for the service performed.

In the case of Central Yellow Pine Asso. v. Illinois Central R. R. Co. et al., 10 I. C. C. Rep., 505, the commission used the following language:

"When carriers advance a rate which has been for some time in force, the burden of proof is upon them to show sufficient grounds for such advance.

"Conceding, however, for argument's sake, that the lumber business had at the date of the advance become phenomenally prosperous and remunerative, this could not justify an advance of a rate already reasonably high.

103 "The test of the reasonableness of a rate is not the amount of the profit in the business of a shipper or manufacturer, but whether the rate yields a reasonable compensation for the service

rendered. If the prosperity of the manufacturer is to have the controlling influence, this would justify a higher rate on the traffic of the prosperous manufacturer than on that of one less prosperous. The right to participate in the prosperity of a shipper by raising rates is simply a license to the carrier to appropriate that prosperity, or, in other words, to transfer the shipper's legitimate profit in his business from the shipper to the carrier."

In H. H. Tift et al. v. Southern Ry. Co. et al., 10 I. C. C. Rep., 548, the commission said:

"The maintenance of materially lower rates for such long periods of time brings this case within the rule that 'where an advance is made in rates which have long been maintained and the evidence shows that the traffic affected is large, important, and constantly increasing, the advance will be held unjust unless it is satisfactorily explained.'"

In reviewing the decision of the commission in Central Yellow Pine Asso. v. Illinois Central R. R. Co. et al. (Illinois Central R. R. Co. v. I. C. C., 206 U. S., 466) the Supreme Court used the following language:

"The question submitted to the commission, as we have said, with tiresome repetition, perhaps, was one which turned on matters of fact. In that question, of course, there were elements of law, but we can not see that any one of these or any circumstances probative of the conclusion was overlooked or disregarded."

And in Southern Ry. Co. v. Tift, 206 U. S., 436, the Supreme Court stated that—

"this case is, though variant in some detail of facts, similar in principle and depends upon the same legal considerations as Illinois Central R. R. Co. v. I. C. C., just decided."

It is therefore fair to assume that the Supreme Court has approved the principle that "Where an advance is made in rates which have long been maintained and the evidence shows that the traffic affected is large, important, and constantly increasing, the advance will be held unjust unless it is satisfactorily explained." And we think this assumption is fully borne out by the language of the court in a later case, I. C. C. v. Chicago Great Western Ry. Co., 209 U. S., 119:

"It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly when rates are changed the carrier making the change must, when properly called upon, be able to give a good reason therefor, but the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done."

This is a mere affirmance of what the act to regulate commerce itself recognizes as a right of the carriers, viz, the right to initiate rates. And it must be apparent that were a "presumption of wrong" to attach to any change in rates which the carriers are authorized to establish this must result in a denial of the free exercise of the

104 right guaranteed by the act. But it would be going far to say that the language above quoted is authority for the inference that the Supreme Court does not still recognize the principle that a rate which has been in force for a long period of years and with respect to which commercial conditions have been adjusted—which rate has presumably afforded a reasonable return to the carriers—may not be materially advanced without imposing upon the carriers the burden of justifying the increase.

Touching important facts similar to those involved in these cases, in the case of Tift v. Southern Ry. Co. (138 Fed. Rep., 764), Judge Speer, whose decree was affirmed by the circuit court of appeals and the Supreme Court of the United States, said:

"After careful consideration of the extensive record, there seems to have been an utter absence of excuse or justification for the concerted action of the railroads which advanced the rates on lumber throughout the South. The vast increase of the lumber traffic had resulted in large increase of net revenue for those roads. The service was inexpensive. It required neither rapidity of movement nor specially equipped cars, and such simple equipment as was needed the shippers were obliged to furnish and pay for. The railroads were required neither to load nor unload the cars. This was done by the consignor and consignee. The lumber carried was neither fragile nor perishable, and the risk therefore from loss or damage was inappreciable. Mr. Tift, the principal witness for the complainants, and one of the largest lumber men of the State, testified that for thirty years he had not been compelled to present a claim for damage on lumber shipped from his mill. Nor were there any exigencies in the financial condition of the principal defendants which called for so vast a contribution to their treasuries from an industry whose product forms such a large part of their tonnage, and which is so indispensable to the public welfare."

It seems clear from all the facts appearing that the rates in effect prior to the advances made in November, 1907, to points of destination, generally, west of the Missouri River were fairly remunerative. To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton per mile accruing to the carriers from this traffic.

It is, therefore, the opinion of the commission upon full hearing and consideration of all the questions and matters presented in these proceedings, that the existing rates involved herein applying from points on defendants' lines in Washington, Oregon, Idaho, Montana, and British Columbia, to all points in the territory on and west of a line running through and including Pembina and Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., are unreasonable and unjust to the extent that they exceed those

that were in effect over the lines of the defendant carriers, respectively, on October 31, 1907, between the respective points of
105 origin and destination shown in the rate schedules hereinbefore specified. It is also the opinion of the commission that the rates now in effect from said points of origin to points in territory east of the territory above described and excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., are unreasonable and unjust to the extent that they exceed 5 cents per 100 pounds above the rates in effect October 31, 1907. This increase of 5 cents per 100 pounds over the old rates must be in conformity with the differentials prescribed by the commission in case No. 1348, infra. As stated in our report in case No. 1327, supra, the rates to points in Minnesota east of the line mentioned should be graded up from that line so as to reach the maximum increase at Minneapolis, St. Paul, Minnesota Transfer, and Duluth. The rates from the Missouri River crossings should be graded up and the maximum increase of 5 cents be reached at the Mississippi River. Chicago rates should apply to all points between the Mississippi River crossings, East Dubuque to East St. Louis, inclusive, and Chicago. The rates to St. Louis, and points taking the same rates, should not exceed the rates to Chicago. This adjustment preserves the differential fixed by the carriers under the advanced rates between the Missouri River and Chicago, and also maintains the parity fixed by defendants between St. Louis and Chicago.

While permitting some rates to be increased, this adjustment also reduces some rates below what they were immediately prior to the increase complained of. We think that complainants are entitled to reparation only on account of shipments upon which charges were collected in excess of the rates between the same points which were in effect on October 31, 1907; that in instances in which the rates herein prescribed are not lower than the rates which were in effect between the same points on October 31, 1907, such reparation should be measured by the difference between the rates actually paid and those herein prescribed; and that in instances in which the rates herein prescribed are lower than the rates which were in effect between the same points on October 31, 1907, such reparation should be measured by the difference between the rates actually paid and those which were in effect between the same points on October 31, 1907.

An order will be made in accordance with these conclusions.

KNAPP, chairman, and HARLAN, commissioner, dissent on the general grounds stated in their dissenting opinion in Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific R. R. Co. et al., No. 1327, supra.

(Endorsed:) Filed December 16th, 1908. Henry D. Lang, clerk.

106 Thereafter and on January 4th, 1909, the following præcipe, setting demurrer down for hearing and order entered thereon were filed and entered in said cause, to wit:

107 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Præcipe for order setting down demurrer for hearing.

To the clerk of the above-named court:

Please enter order setting down demurrer of defendant for hearing at next rule day.

JAMES B. KERR.
HALE HOLDEM,
F. C. DILLARD,
W. W. COTTON,
Solicitors for Complainants.

(Endorsed:) Præcipe for order setting demurrer down for February rules. Order entered T. M. vol. 39, page 91. Filed January 4th, 1909. Henry D. Lang, clerk.

108 United States Circuit Court for the District of Minnesota, Third Division.

(Term minutes: June term, A. D. 1908—January 4th, 1908.)

Monday morning.

Court opened pursuant to adjournment.
Present, Hon. Milton D. Purdy, judge; Henry D. Lang, clerk.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} Equity. No. 884.

Pursuant to a præcipe this day filed herein signed by the solicitors for the complainants, it is by the court ordered that the demurrer of defendant be, and the same hereby is, set down for hearing at the next rule day, to wit, February 1st, A. D. 1909, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

Thereafter and on the same day the following replication was filed in said cause, to wit:

109 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; and Oregon Railroad and Navigation Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity. No. 884.

Replication.

These repliants saving and reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant for replication thereunto, saith that they do and will aver, maintain, and prove their said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained, material, or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by their said bill they hath already prayed.

JAMES B. KERR,
HALE HOLDEN,
W. W. COTTON,
F. C. DILLARD,
Solicitors for Complainants.

(Endorsed:) Replication. Filed January 4th, 1909. Henry D. Lang, clerk.

110 Thereafter, and on January 11th, 1909, the following instructions of court in relation to hearing upon demurrer was filed in said cause, to wit:

111 ST. LOUIS, MISSOURI, *January 9, 1909.*

Hon. HENRY D. LANG,
Clerk U. S. Circuit Court, St. Paul, Minnesota.

DEAR SIR: Regarding the three cases, Nos. 883, 884, and 885, the railroad cases against the Interstate Commerce Commission pending in St. Paul, in which demurrers have been interposed, you may notify the lawyers that the circuit judges will be in St. Louis until the first of April; that during April they will be separated, and that they will be in St. Paul during the session of the court of appeals in May. The cases may be heard at St. Paul at some convenient time after May 1st, or they may be heard at St. Louis at some convenient time prior to April 1st, if they desire to urge their hearing at so early a date. Personally I should prefer to have them heard at St. Paul, but the judges will accommodate the lawyers as to the time of hearing. Before fixing upon the time, however, we should like notice of the time desired, because some of the judges are liable to be out of the city here unless we agree upon the time.

Yours, truly,

WALTER H. SANBORN,
U. S. Circuit Judge.

(Endorsed:) Instructions of court in relation to hearing upon demurrer. January 11th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on February 15th, 1909, the following order appointing F. N. Dickson special master was filed and entered in said cause, to wit:

112 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Come now the parties, the complainants, by F. C. Dillard, Esq., and the defendant, by Luther M. Walter, Esq., and after due consideration,

It is hereby ordered that Frederick N. Dickson, Esq., of St. Paul, Minnesota, be, and he is hereby, appointed special master in chancery in this case.

The special master hereby appointed is empowered and directed to take and report to the court the evidence in this cause; to examine the same; to make the necessary computations; to find and state the facts in this case, and to report advisory conclusions of law and recommend a proper form of decree herein.

It is further ordered that upon the completion of his report, the special master shall notify counsel for the respective parties thereof

and shall exhibit said report to them or deliver to them copies thereof, that each of the parties to this suit may thereupon file exceptions to the report with the master within thirty days after its exhibition or delivery to their counsel, and the master shall thereupon consider and sustain or overrule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings thereon, the evidence and any modifications of or additions to his report he may deem it just and proper to make in view of the exceptions.

Upon the filing of such report and exceptions, this cause shall stand for hearing before the court upon said exceptions as though
113 they had been made at the time specified in rule 83 in equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainants shall take their evidence is fixed and limited to sixty days from the date hereof; that the time within which the defendant shall take their evidence in defense is fixed and limited to forty-five days thereafter and the time within which the complainants shall take their evidence in rebuttal is fixed and limited to thirty days thereafter.

February 13, A. D. 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order appointing F. N. Dickson special master. Entered term minutes, volume 29, page 159. Filed February 15th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on February 16th, 1909, the following oath of F. N. Docksin, as special master, was filed and entered in said cause, to wit:

114 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION.
No. 884. Equity.

I, Frederick N. Dickson, do solemnly swear that I will support the Constitution of the United States, and faithfully, impartially, and to the best of my ability, perform my duties as special master in chancery in the above-entitled cause. So help me God.

FREDERICK N. DICKSON.

Subscribed and sworn to before me this 16th day of February, A. D. 1909.

[SEAL OF COURT.] LOUISE B. TROTT,
Deputy Clerk U. S. Circuit Court for the District of Minnesota.

(Endorsed:) Oath of Frederick N. Dickson, special master. Entered Miscellaneous Records, vol. 1, page 180. Filed February 16th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on the same day the following stipulation postponing demurrer was filed in said cause, to wit:

115 In the Circuit Court for the United States for the District of Minnesota.

NORTHERN PACIFIC RY. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
No. 884.

In this cause it is stipulated and agreed that the demurrers may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier day.

HALE HOLDEN,
F. C. DILLARD,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

FEBRUARY 3RD, 1909.

(Endorsed:) Stipulation postponing demurrer. Filed February 16th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

And thereafter on the same day the following order postponing hearing on demurrer was entered of record in said cause, to wit:

116 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.

In accordance with a stipulation to that effect, signed by the solicitors for the respective parties and filed herein, it is by the court ordered that the demurrer may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier date.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order postponing hearing on demurrer. Entered T. M., vol. 39, page 164. Filed February 16th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on March 15th, 1909, the following order appointing Robert S. Taylor stenographer was filed and entered in said cause, to wit:

117 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY CO. ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION.
No. 884.

It is hereby ordered that Robert S. Taylor be, and he is hereby, appointed stenographer, empowered and directed to take and report, under the direction and orders of Honorable Frederick N. Dickson, the special master herein, the evidence that may be offered in the case above entitled.

WALTER H. SANBORN,
Circuit Judge.

ST. LOUIS, MO., *March 15, 1909.*

(Endorsed:) Order appointing Robert S. Taylor, stenographer. Entered T. M., vol. 39, page 202. Filed March 15th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on May 15th, 1909, the following stipulation extending time to take complainants' testimony and order were filed and entered in said cause, to wit:

118 Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 884.

Stipulation.

It is hereby stipulated and agreed by counsel for the respective parties that the time for taking complainants' evidence may be extended until May 15, 1909, and that on or before that day or immediately thereafter the time may, by order of court, be fixed for the taking of evidence in behalf of the defendant, as well as time thereafter, if desired, for taking evidence by complainants in rebuttal.

Dated this 15th day of April, 1909.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation extending complainants time to take testimony to May 15, 1909. Filed April 15, 1909. Henry D. Lang, clerk.

119 Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 884.

Order.

Upon reading the stipulation filed in this cause this day, duly signed by counsel for the parties hereto, it is

Ordered, that the time heretofore granted to complainants for taking testimony in this cause be extended until May 15, 1909; that

defendant may on or before said date, or immediately thereafter, apply to the court, by stipulation or otherwise, for the fixing of a date for the taking of its testimony herein, at which time an order will be entered for that purpose, and also setting a time for taking by complainants of testimony in rebuttal after the completion of defendant's testimony so to be provided for.

In other respects the order heretofore made touching the taking of testimony and the report of the master appointed herein shall remain as provided for in the original order.

Dated April 15, 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order extending time to take complainants testimony. Entered T. M., vol. 39, page 259. Filed April 23rd, 1909. Henry D. Lang, clerk.

120 Thereafter and on March 11, 1909, the following stipulation to tax costs of H. Lee, crier, Chicago, was filed in said cause, to wit:

121 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} In equity. No. 884.

Stipulation to tax costs.

It is agreed that the clerk shall tax in this cause the sum of $2.50 per day for eight days in favor of H. Lee, court crier, as compensation to him for attendance at the argument of this cause before special master, in the city of Chicago, February 8th to 16th, inclusive. These costs to be adjudged against the losing party in this cause in the final event of the action.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Attorneys for Complainants.
LUTHER M. WALTER,
J. N. TEAL,
W. A. WIMBISH,
Attorneys for Defendant.

Dated at Chicago, Illinois, March 8th, 1910.

(Endorsed:) Stipulation to tax costs of H. Lee, court crier. Filed Mar. 11, 1910. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on Jan. 5, 1910, the following stipulation as to record for submission to master, etc., was filed in said cause, viz:

122 DECEMBER 4, 1909.

UNION PACIFIC R. R. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 883.

NORTHERN PACIFIC RY. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 884.

GREAT NORTHERN RY. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 885.

Stipulation.

In addition to the stipulation entered into at St. Paul concerning the printing of the record in the cases before the Interstate Commerce Commission, the following supplementary agreement, subject to the objections heretofore made as to the admissibility of testimony, is hereby entered into between counsel for the respective parties, as follows, to wit:

1. The printed abstract of the oral testimony fairly presents the substance of all that character of testimony offered before the Interstate Commerce Commission on the hearing before it of these cases, and the printed abstract fairly presents the selected exhibits or the substance thereof presented to said commission on said hearing.

2. The other exhibits presented on the hearing aforesaid or reports and documents on file with the commission or referred to on the hearing before said commission in said cases may be considered by the master and used by either party hereto on the hearing before him without the printing thereof.

3. Either of the parties hereto may print and file with the master or the court such portions thereof as counsel may deem material, but if the same be not printed for the hearing before the master no rights to use the same as evidence or rights to print the same for the use of the court thereafter are waived.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.
LUTHER M. WALTER,
JOSEPH N. TEAL,
WILLIAM A. WIMBISH,
Solicitors for Defendant.

(Endorsed:) Stipulation as to record for submission to master, &c. Filed Jan. 5, 1910. Henry D. Lang, clerk.

123 Thereafter and on July 30th, 1910, the following stipulation to modify order and order were filed and entered of record in said cause, to wit:

124 In the Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., Complainants, *vs.* INTERSTATE COMMERCE COMMISSION, Defendant.	In equity. No. 884.

Stipulation.

It is hereby stipulated and agreed that the order entered herein on February 15, 1909, shall be modified, and that either party hereto shall file its exceptions to the master's report on or before August 19, 1910; and that an order may be entered herein setting down said exceptions for hearing before the master in the city of St. Paul in August 19, 1910; that said order may provide that the master shall pass upon said exceptions and file his report, said exceptions, a report of his action thereon, and all other matters contemplated by the order of February 15, 1909, in the clerk's office on or before August 27, 1910; that said order shall provide that either party hereto shall file such additional exceptions as may be desired in the clerk's office on or before September 10, 1910, and that this cause be set down for hearing before the circuit judges of the city of St. Paul on September 15, 1910.

HALE HOLDEN,
Solicitor for Complainants.

Dated this 27th day of July, 1910.

LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation to modify order. Filed July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

125 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL., Complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	In equity. No. 884.

Order.

Upon reading the stipulation dated July 27, 1910, of the parties hereto, duly filed herein, and upon due consideration thereof.

It is ordered, That the order heretofore entered on February 15, 1909, appointing Honorable Frederick N. Dickson as special master, and defining his duties touching the making of a report, hearing exceptions thereon, and filing his said report, exceptions, and rulings thereon in the office of the clerk in this court, be, and the same is hereby, modified; and it appearing that the special master did on July 22, 1910, deliver a copy of his report to each of the parties hereto in lieu of the provisions of said order,

It is ordered, That either party hereto shall file its exceptions, if any, to the master's report with him on or before August 19, 1910, and that on that day at the city of St. Paul the special master shall hear arguments upon any exceptions so filed and presented to him to his report; that on August 27, 1910, the special master shall file with the clerk of this court his report, any exceptions thereto filed with him as aforesaid, a statement of his action and rulings thereon, together with a form of decree recommended by him to be entered in this cause.

It is further, in accordance with the stipulation as aforesaid, That either party hereto shall file with the clerk in this court on or
126 before September 10, 1910, such further exceptions as may be taken, and that this cause be, and the same is hereby, set down for hearing before the circuit judges of this circuit, in the United State courtroom at the city of St. Paul, Minnesota, on September 15, 1910, upon the master's report and the exceptions thereto, including those exceptions filed with him as aforesaid, and such additional exceptions as may be filed in the clerk's office as provided for in this order.

WILLIS VAN DEVANTER,
United States Circuit Judge.

Dated this 30th day of July, 1910.

(Endorsed:) Order. Entered T. M. Vo. 42, page 118 and 119. Filed July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on August 27th, 1910, the following master's report was filed in said cause, to wit:

127 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, OREGON RAILROAD & NAVIGATION COMPANY, SOUTHERN PACIFIC RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, AND OREGON CALIFORNIA RAILROAD COMPANY, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.

NORTHERN PACIFIC RAILROAD COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885.

Master's report.

These three suits were begun by the carriers parties complainant hereto to enjoin the enforcement of certain orders of
128 the Interstate Commerce Commission prescribing maximum rates for the future transportation of lumber in carload lots from points on the Pacific coast to points in various States and Territories east and southeast of the points of origin. In the case of No. 883, called the Union Pacific case, an injunction is sought against an order made by the commission in its docket No. 1327, upon a complaint brought by the Oregon and Washington Lumber Manufacturers' Association and others against the Union Pacific Railroad Company and others. The complaint alleged that an advance in the rates on lumber and other forest products established by the defendants and other participating carriers from points in Oregon, Washington, Idaho, Montana, and British Columbia to points in other States therein set forth were unreasonable. The rates prescribed by the commission were the same as those in effect immediately prior to November 1, 1907, except that the rates to all points on and east of a line drawn from Pembina, North Dakota, south to Port Arthur, Texas, subject to minor exceptions, might be increased not to exceed 5 cents per one hundred pounds.

In the case of No. 884, called the Northern Pacific case, the bill attacks an order of the commission made in its docket No. 1329 and No. 1335, upon complaints filed by the Pacific Coast Lumber Manufacturers' Association and the Southwest Washington Lumber Manufacturers' Association, respectively. Those complaints attack the reasonableness of defendant's rates substantially as complained of in the Union Pacific case, docket No. 1327.

In the case of No. 885, called the Great Northern case, the bill attacks an order prescribing rates for the future on lumber and

forest products made in its docket No. 1348, upon complaint of the Potlatch Lumber Company and others. The rates attacked
129 had been advanced on November 1, 1907, and applied from points of origin in the States of Washington, Oregon, and Idaho, east of the Cascade Mountains, commonly known as interior points. The points of destination were in States south and east of the States in which were the points of origin. In this case the commission established rates to the various points of destination referred to in numbers 1327, 1329, and 1335, lower than the coast rates group by differentials, beginning at not less than 2 cents per one hundred pounds, and graded up to not less than 6 cents per one hundred pounds from the group west of Spokane. From the Spokane group the differentials graded from 3 cents to 7 cents per one hundred pounds.

All these orders were effective August 15, 1908, but were later extended by order of the commission so as to become effective October 15, 1908. The rates so prescribed by the commission are now and have been continuously in effect since said latter date, and they expire by limitation of the statute on October 15, 1910.

These three cases were all referred to the master to hear and report findings of facts and recommendations for a decree and were tried together.

It is conceded that all technical requirements of the statute necessary to properly bring the matter before the Interstate Commerce Commission and to confer on the commission authority to determine and prescribe rates have been complied with. The bills allege in substance that in making the various orders the commission acted without warrant of law in that the act to regulate commerce as amended by the so-called Hepburn bill of June 29, 1906, is unconstitutional and void because it confers upon the commission executive, legislative, and judicial powers; and for the further reasons that the rates prescribed by the carriers and which the commission reduced were low, just, and reasonable, and that the rates pre-
130 scribed by the commission in lieu thereof were and will be for more than three years from the date of the filing of the bills unjust and inadequate compensation for the service rendered; that the making of the orders complained of was pro tanto depriving the complainants of their property without due process of law in violation of the 5th and 14th amendments of the Federal Constitution; that sections 15 and 16 of the act to regulate commerce insofar as they make the orders of the commission effective of their own force prior to a hearing in a court of justice upon the question of the reasonableness of the rates prescribed in said orders, are void as being in conflict with the Federal Constitution, which provides that all judicial power is vested in the courts of the United States; that section 16 of the act to regulate commerce is void for the additional reason that it prescribes that the carrier failing to comply with an order of the commission shall forfeit to the United States the sum of $5,000.00 for each day said carrier fails to obey said order, notwith-

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standing that the question of the unreasonableness of the rates has not been judicially investigated in any court of law, and that it deprives complainants of their property without due process of law, contrary to article five of the amendments to the Constitution of the United States.

The bills further allege that upon the hearings of the case before the commission no evidence was considered or offered which in any wise showed, or tended to show, that the rates complained of were excessive, unjust, or unreasonable, and that the commission entered the orders complained of without any justification in fact therefor and without any evidence or finding of fact that said rates fixed by the defendants before the commission were excessive, unjust, and unreasonable; that the circumstances and conditions surrounding the transportation of lumber existing on November 1, 1907, were
131 wholly different from those existing at the time when the rates in effect prior to said date were made; that the commission held as a matter of law that the continuance of such rates raised a presumption that the higher rates were unjust and unreasonable; that in such holding the commission acted erroneously, through a mistake and misapprehension of the law and without authority; that the rates so fixed by the commission are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and bear no just or fair relation to the rates on through traffic moving over the complainants' lines; and that the rates prescribed by the commission will impose an undue and unreasonable burden, not only upon the complainants, but upon the shippers of other commodities.

The complaints further alleged "that the rates so fixed by said order are unreasonable and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the States of Washington, Oregon, Montana, and Idaho to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order; and your orators, upon information and belief, aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on through traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden, not only upon your orators, but upon the shippers of other commodities."

132 This is the only allegation of confiscation contained in the bills.

To these bills the commission filed a demurrer and answer, the demurrer applying to those allegations of the bill which set forth that

certain portions of the act to regulate commerce are unconstitutional, and by stipulation the questions raised by these demurrers are reserved for the court's decision, and with those questions the master has nothing to do.

In its answer the commission denies that the rates in effect and complained of before the commission were either unreasonable or unjust and will so continue to be. The answer sets forth the position of the commission with reference to the extent of the review which the court should exercise over the action of the commission, namely, that the court should not make any inquiry with reference to whether the rates prescribed by the commission are just and reasonable, except within the constitutional guaranty in the fifth amendment, which prohibits the taking of private property without just compensation and due process of law. The answer alleges that the rates prescribed by the commission will afford just compensation for the service rendered and that the orders were made in due process of law. It is further alleged that the court should not hear and determine these cases upon any state of facts which were within the knowledge of the complainants and which they failed or neglected to present to the commission at the time of the hearings, nor upon any facts which may have arisen since said hearings, except such facts be first presented by an application for rehearing or otherwise to the commission. It is further alleged that the mere allegation that the rates of transportation prescribed by the defendant will not afford a fair compensation or will entail a loss or will be unremunerative ought not to be
133 considered, because such allegations are statements of conclusions or opinions of interested parties and do not have coupled therewith any statements of facts from which the reasonableness of a rate can be determined. It is further alleged that the commission is vested with the exclusive power of determining what are just and reasonable rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry leading to an independent conclusion except such as may be necessary to protect the constitutional rights of complainants. The answer denies that the defendant made the orders complained of without any evidence that the rates complained of were in violation of the act to regulate commerce; and avers on the contrary that the orders were made after a full inquiry and due investigation which disclosed facts compelling the orders made by the commission.

There seems to be a sharp controversy between complainants and defendants as to the scope of the inquiry to be entertained by a Federal court in reviewing an order of the Interstate Commerce Commission which fixes and prescribes rates for the future. The complainants claim as follows: "The questions involved in all three suits are, however, practically identical, being simply the question whether the rates as advanced were unreasonable and whether the rates the commission put into effect in place of them are reasonable."

It is apparent from the arguments in the briefs that the words "reasonable" and "unreasonable" are used by the complainants in the ordinary sense. The complainants argue that inasmuch as the interstate commerce act enjoins upon the commission the duty of prescribing a reasonable rate that any rate which they may prescribe which is not reasonable is unlawful and therefore without the scope of their authority, and that a Federal court may fully review the action
134 of the commission with reference to the reasonableness of a rate prescribed by them as an operating proposition above and beyond the mere question as to whether or not it violates the constitutional guaranties of just compensation.

The defendants insist that the court has no right to investigate the rate prescribed for the future by the Interstate Commerce Commission any further than to ascertain whether or not it violates the constitutional guaranties of just compensation and due process of law. The defendants claim that the only questions properly before the court are the following: (1) If this court finds that the order was regularly made, is not fraudulent or so arbitrary as to exceed the limits of regulation, should it make any other inquiry than as to whether the rates prescribed are confiscatory? (2) Under the circumstances disclosed in this case should this court consider the reproductive cost of complainants' property as a material fact in throwing light upon the subject matter of the inquiry? (3) Should evidence be considered by this court which has not been first presented to the Interstate Commerce Commission, there being no allegation that such additional evidence is newly discovered or could not have been presented to the commission? (4) Should any of defendant's objections to the admissibility of testimony be sustained? (5) Do the facts shown of record warrant a finding that the rates prescribed by the commission are confiscatory? (6) Are the orders of the commission in any respect unlawful?

These suits involve rates for the transportation of lumber and forest products from points on the Pacific coast to points on and east of the Missouri and Mississippi Rivers. The facts and circumstances leading up to this litigation and out which it grows are as follows:

To the west of the Cascade Mountains from the crest of the
135 range to the Pacific coast is a large, heavily timbered district known and dealt with in the record as the coast district, and the coast basis of rates applies to that territory. On the east side of the Cascade Mountains as far east as the city of Spokane, Washington, is another territory, which is not referred to or much dwelt on in the testimony and the rates from which do not seem to be involved in these cases. Spokane is the center of another lumber producing territory. In early years before this industry at Spokane became sufficiently developed to invade the eastern markets the old coast rates applied to Spokane and all territory west thereof, but later on, when the Spokane lumber industry outgrew their merely local markets, a differential rate slightly lower than the old blanket coast rate was installed for eastern shipments, so that Spokane forms the basis

of a lower differential rate on eastern shipments. Coming farther east and continuing up the slope of the Rock Mountains, we reach another district, which is the basis of a still lower differential rate on eastern shipments, known as the Montana-Oregon basis and typified on the Great Northern Road by Kalispell, Columbia Falls, and White Fish; on the Northern Pacific by Hamilton, St. Regis, and Missoula, Montana; and on the Union Pacific and Oregon Short Line Railroads by Boise, Idaho, and Baker City, Oregon.

As all the differential rates are of course controlled and regulated by the basic rate or the through rate east from the coast district, the discussion in these cases has been confined to the through rates. Prior to November 1, 1907, the following were the rates in effect from coast points to the larger destinations in the Middle West: Coast to St. Paul, 40 cents per one hundred pounds; coast to Omaha, 50 cents; coast to Chicago, 50 cents; coast to Denver, 40 cents; coast to St. Louis, 52½ cents.

136 These rates had been in effect for about 15 years and were first installed at the time the Great Northern Road completed its road to the coast. A higher rate had been in effect prior to that time, but the installation of a 40-cent rate from the coast to St. Paul by the Great Northern Road compelled a reduction in rates by the other lumber-carrying roads, and the foregoing rates had been in effect since the latter part of 1893 or the very early part of 1894. On the first day of November, 1907, the roads duly installed a new tariff of rates which advanced the rates on corresponding prices as follows: Coast to St. Paul, 50 cents; coast to Omaha, 55 cents; coast to Chicago, 60 cents; coast to Denver, 50 cents; coast to St. Louis, 60 cents.

Prior to November 1, 1907, the rates from the Spokane district were as follows: Spokane to St. Paul, 40 cents; Spokane to Omaha, 45 cents; Spokane to Chicago, 50 cents; Spokane to Denver, 40 cents; Spokane to St. Louis, 52½ cents. By the tariff installed November 1, 1907, these Spokane rates were advanced as follows: Spokane to St. Paul, 45 cents; Spokane to Omaha, 50 cents; Spokane to Chicago, 55 cents; Spokane to Denver, 45 cents; Spokane to St. Louis, 55 cents. Prior to November 1, 1907, rates in the third or Montana-Oregon district were as follows: To St. Paul, 40 cents; to Omaha, 40 cents; to Chicago, 50 cents; to Denver, 35 cents; to St. Louis, 49½ cents; and by the tariff installed November 1, 1907, these rates were raised as follows: To St. Paul, 43 cents; to Omaha, 43 cents; to Chicago, 53 cents; to Denver, 40 cents; to St. Louis, 52½ cents.

The conclusion of the commission was to practically restore the old rates with the exception that they permitted an advance of 5 cents

137 per one hundred pounds on the freight destined to points east of the Mississippi River. The commission drew a line which they called the Pembina–Port Arthur line. Pembina is a station on the international boundary on the Red River of the North near the western boundary of Minnesota. They drew a line through Pembina running approximately due south, following the State lines approximately until they arrived at Sioux City, Iowa, then following

the Missouri River down through Omaha and Kansas City, then the line of the Kansas City Southern Road to Port Arthur, Texas, and this line is known as the Pembina–Port Arthur line. West of that line they restored the rates as they had been previous to November 1, 1907, denying the application for an advance. East of that line they permitted an advance of 5 cents per one hundred pounds.

There is no testimony in this record directly applicable to the effect upon the earnings of the complainants of this new rate established by the commission on through traffic. While it was not as much as the complainants considered reasonable, still, on through traffic, it was a distinct advance to the northern lines, but no testimony has been offered showing how this rate actually affected the earnings of the complainants.

The testimony of the complainants has been mainly directed to showing that the old rates in force for 15 years prior to November 1, 1907, were unreasonably low and did not produce their fair share of returns or remuneration to the roads. Their testimony has been largely confined to a statement of the conditions prevailing in 1893, when the old rate was first installed, and to a statement of the changed conditions prevailing in 1907, on account of which they claimed the advance in rates was justified.

The complainants admit that it is not possible for them to show the actual cost of the transportation of a carload of lumber, the
138 actual value of that portion of their property which is devoted to the lumber traffic, what relation the net returns on lumber traffic bear to the entire body of the net returns.

They have offered testimony substantially showing that in 1893, at the time of the installation of the old rates, the lumber industry upon the coast was in its infancy and unable to compete in the Middle West with the white pine of northern Michigan, Wisconsin, and Minnesota. It is demonstrated that in 1893 the white pine of northern Michigan, Wisconsin, and Minnesota controlled the entire northern Middle West market as far south as St. Louis. This was on account of the cheap rates of water transportation afforded by the Great Lakes and the Mississippi River. In 1893 the railroads had a large eastbound empty-car movement. There were no products on the coast sufficient to load for the eastern markets the cars required to carry to the coast all westbound traffic.

For the purpose of providing loads for the eastbound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul.

In 1893 the prices of labor and materials and all things which went into the equipment of railroads in the handling of traffic, as well as the price of lumber, were very low.

In the period intervening between that time and November 1, 1907, the situation has been reversed. The white pine of northern Michigan, Wisconsin, and Minnesota has practically disappeared from the market and is no longer an important element of competition.

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The Oregon and Washington lumber has practically acquired the old white pine market. The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry. Prices of labor and materials have also increased to a very large extent and the empty-car movement which in 1893
139 was from the west east is now from the east west, or a westbound empty-car movement now prevails. To what extent this is due to the large output of coast lumber has not been clearly shown. It appears to be partly due to other species of traffic, but to a large extent it is no doubt brought about by the very great increase in the shipments of lumber east.

On the other hand it as clearly appears that the price of stumpage, prices of labor, price of machinery, and all other elements entering into the lumber traffic have increased in proportion, as have the prices of those things which enter into the transportation increased.

It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements and in addition thereto have accumulated large surplus funds.

Two of the complainants in this action, the Great Northern road and the Northern Pacific road, have offered before the master a large volume of testimony consisting of an estimate made by their engineers and heads of departments as to what it would cost to reproduce their railroads. This estimate contemplates in the case of the Northern Pacific a period of 12 years for the reproduction of the road, and in the case of the Great Northern a period of 8 years. In making the estimate it is not contemplated that any net returns for traffic or business done during the period of construction shall be had. In the case of the Northern Pacific the estimate approximates $700,000,000.00, and in the case of the Great Northern, $550,000,000.00.

It must be borne in mind that this cost of reproduction is not
140 an ultimate fact to be considered in the solution of these cases, but merely a collateral fact offered to influence the court's conclusion upon the ultimate fact as to the real value of the properties.

The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them, we think this evidence so remote and speculative as to be absolutely immaterial in this case.

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FINDING OF FACTS.

Upon careful consideration of all the evidence in this case I find the following ultimate facts, which, in my judgment, is a fair analysis of the evidence and illustrates the situation in reference to the rates in question.

I.

In 1889 a 40-cent rate per one hundred pounds was installed by the Union Pacific system from Portland, Oregon, to Denver, Pueblo, and other Colorado common points. In 1893 a 45-cent rate was installed by this system from Portland to Council Bluffs and Omaha and other Nebraska main-line points. Concurrently with this rate a rate of 50 cents was made to Chicago and 52½ cents was made to St. Louis.

In 1901 the 45-cent rate to Omaha and Council Bluffs was
141 raised to 50 cents and extended or blanketed to include Sioux City, Kansas City, and other points west thereof. The 50-cent rate to Chicago was also maintained.

II.

In 1893 the Great Northern road was completed to the coast, and in the latter part of that year or the early part of 1894 installed the superseded rates here in controversy, which were met by the Northern Pacific system and were as follows: To St. Paul, 40 cents per one hundred pounds; to Chicago, 50 cents; to the Mississippi River, 50 cents; to St. Louis, 52½ cents; to Denver, 40 cents; to Missouri River points, 50 cents.

The Union Pacific system never met the 40-cent rate to St. Paul by any of its Missouri River crossing rates. Its 50-cent rate to Omaha continued concurrently with the 40-cent rate to St. Paul from 1901 to November 1, 1907. But because of the 50-cent rate to Chicago from St. Paul, via the northern lines, it was obliged to blanket or extend its Omaha rate of 50 cents to Chicago.

III.

At and prior to 1893 the lumber manufacturing industry in Washington and Oregon was in its early infancy. Except for purely local consumption the mills disposed of their products at points reached by water transportation. The volume of business continued to be inconsiderable for several years after the Great Northern road reached the coast.

IV.

The superseded rates were made voluntarily by the carriers in 1893 avowedly for the purpose of stimulating the lumber industry

in the coast territory and thereby producing a traffic for the
142 roads and more particularly and immediately for utilizing an east-bound empty car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well defined east-bound empty car movement from the coast.

V.

In 1893, at the time the superseded rates were installed, the entire country was suffering from the effects of the financial panic of 1893; "hard times" prevailed and industries of all kinds were at a low ebb.

VI.

In 1893 the lumber market of the northern Middle West, from as far south as St. Louis, was controlled and dominated by the white pine of Michigan, Wisconsin, and Minnesota, and continued to be so controlled for some years thereafter. The cheap water transportation afforded by the Great Lakes and the Mississippi River enabled the white pine to control this market until the supply became inadequate to the demand and, in fact, exhausted. Thereafter this market became to a certain extent a battle ground between the Washington and Oregon lumber and the western pine from the Spokane district on the one hand and the southern pine on the other; but the unexampled revival of industry and increase in general business prosperity enjoyed by this middle district since 1897 has created such an enormous demand for lumber and forest products that this competition between western and coast lumber and southern lumber seems to have had but little effect in keeping down the price of lumber.

VII.

The superseded rates of 1893 were voluntarily continued in force by the carriers until November 1, 1907, and during that period,
143 especially during the last few *few* years thereof, under this rate the lumber industry of this coast territory increased enormously. Many mills were built in the interior, where they were solely dependent upon rail transportation. Except a limited number of mills situated at points like Portland, Oregon, the great majority of the mills engaged in this industry are wholly dependent on the railroads for an outlet to markets. As the industry has grown it has prospered and been profitable ever since the 40-cent rate went into effect. At the time of the hearing of these cases before the commission the amount invested in the lumber business in Oregon was approximately $60,000,000.00, exclusive of mills, logs, standing timber, and timber land. Approximately 40,000 persons were directly engaged in the industry. The annual pay rolls exceeded $20,000,000.00 and the annual output of lumber exceeded 2,000,000,000 feet. There is no sufficient data in the record from which to accurately

state the number of lumber-producing plants in all this coast territory, the amount of the investment therein, or the number of men employed therein, but it clearly appears that there are many hundred mills, in which are invested many millions of dollars and in which many thousands of men are employed, that the annual output has been constantly and rapidly increasing in recent years, and that the industry is the most important one of that region.

Part of the product of the mills of this coast territory are practically subject to no competition because of the superior nature of the lumber. On long timber there is little or no competition from other producing points. A certain portion of the lumber manufactured on the north Pacific coast can compete successfully with other lumber in any market. They there produce certain dimensions and qualities that are produced to but a limited extent for delivery elsewhere. These qualities are the choice portions of the logs. Necessarily
144 in producing them a large quantity of common lumber is also produced. The greater part of this common lumber finds its market locally or in the near-by States and in Colorado, Nebraska, and North and South Dakota. Comparatively little of this common lumber reaches the Missouri and Mississippi River territory. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates.

The combined north Pacific Coast States market about 5 billion feet annually as against approximately 19 billion feet of southern and white pine, showing that the southern and white pine predominate and fix the price in competitive markets.

During the summer of 1907 it became known and understood among the lumber trade that the then existing rates were to be increased. The industry immediately began to feel in some degree the effects of this unsettled rate situation. Purchasers at destination points began to postpone the placing of orders and to cancel orders already placed. The reasons given were that on account of the increase in rates lumber would be cheaper in the near future. One salesman testified that on a trip where he would ordinarily take orders for from 300 to 500 cars of lumber he was unable to get a single order because he would not guarantee the old rates. Dealers and purchasing agents of railroads refused to buy on the ground that after the advanced rates became effective there would be a falling off in the price of lumber caused by the surplus that would exist in producing territory which could not reach its former competitive markets under the advanced rates.

At and for some months prior to the hearing of these cases before the commission the lumber industry in this coast territory was greatly depressed and a large percentage of the mills had been shut down and were not in operation.

145 At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business.

At the time the superseded rates were installed stumpage in the coast district was very low, some purchases being made at 25 cents per thousand feet. This low price continued for some time after that date and comparatively few mills took advantage thereof. As the area of the white pine in Wisconsin, Michigan, and Minnesota decreased the value of Pacific coast stumpage increased, as did also the value of the yellow pine stumpage of the Southern States. The increase in the price of Pacific coast stumpage has been gradual and steady since 1893. The greatest increase has occurred since 1902 and the largest part of that increase has taken place since 1905. Prior to the advance in rates in November, 1907, prices in Oregon ranged from $1.50 to $2.50 per thousand feet and along the Columbia River it was as high as $3.00. The majority of the millmen own their stumpage, but the majority of the stumpage is not owned by the millmen. Many large tracts are held by individuals and corporations that are not engaged in the manufacture of lumber. The price of logging has gradually increased until at the time of the hearing of these cases before the commission it cost between $5.00 and $6.00 per thousand feet to get logs to the mill. In some parts of Oregon it was even higher. The price of logs in the open market has likewise increased since 1893 from $2.50 to $3.00 per thousand feet in the year 1893 up to $6.00 in 1900. This price continued until 1902, then with various increases and fluctuations to 1904 and 1905. In 1905 the price reached $9.00 per thousand feet. Following the Valparaiso and San Francisco disasters the price increased during 1906 and 1907 to $13.50 per
146 thousand feet. After the announcement was made that the lumber rates were to be advanced the price of logs fell off $1.00 per thousand feet in the month of July, 1907, in August, 1907, the price feel off $1.50 per thousand feet with a corresponding fall in the month of September. And the total decrease from August to December was $4.00 per thousand feet. At the time of the hearing of these cases before the commission fir logs were sold for $9.00 per thousand feet in Portland, which price included a 50-cent towage charge.

The cost of manufacturing lumber has kept pace with the increased cost attendant upon all other industrial pursuits. From 1904 to 1907 the advance has been between 35 and 40 per cent in both labor and material. The increase in labor exceeds the increase in material, but the two make an average of about 40 per cent.

During the year 1906 the millman's average profit per thousand feet upon all classes of lumber produced by them ranged from $1.60 to $2.80. A lower profit was made by mills that bought logs in the open market or those operating where logging was more expensive. The higher profit was made by mills that owned their own stumpage, for which they charged themselves from $1.00 to $1.50 per thousand feet. Some of the mills that made a profit of $2.80 per thousand feet in 1906 made a profit of 26 to 50 cents per thousand feet in 1905. The unusual general prosperity of the year 1906, coupled with the extraordinary demand for lumber caused by the Valparaiso and San

Francisco disasters, undoubtedly account to a considerable extent for the sharp increase in profits in the year 1906.

In the year 1890 there was a decided predominance in the empty car movement east bound amounting at that time to about 161.17 per cent over the west-bound empty car movement on the Northern
147 Pacific Railway. In 1891 the predominance of east-bound empty car movement over west-bound had decreased to 72.17 per cent, and in 1892 it had further decreased to 4.35 per cent. In 1893 and all subsequent years down to 1907 conditions have been reversed, and during this entire period there has been a large predominance of west-bound empty car movement over the east-bound on the Northern Pacific Road. Approximately the same condition prevailed during the year referred to upon the Great Northern Road. In 1893, when the Great Northern was completed to the coast, the west-bound loaded freight car mileage on the main line between Havre, Montana, and Seattle, Washington, was 3,688,568, as against 2,366,546 east-bound. At the same time the west-bound empty car mileage was 607,088, as against 1,922,262 east-bound. In 1897 the west-bound loaded mileage was 7,104,181, as against 10,050,979 east-bound, whereas the empty west-bound mileage was 3,527,377, as against only 576,071 east bound empty mileage. In 1906 the west-bound loaded mileage was 22,939,649, as against 32,323,906 east-bound loaded mileage, whereas the west-bound empty mileage had increased to 11,860,201, as against 1,806,850 east-bound empty mileage.

Ever since 1903 the condition in respect to the predominance of empty car mileage has been changing until in 1907 the west-bound empty car movement greatly predominated over the east-bound empty car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East. The establishment of manufacturers of finished products in the West has to a certain extent diminished the volume of manufactured products moving from the East to the West. In 1890 upon the Northern Pacific the predomination of west-bound loaded car mileage over east-bound loaded
148 car mileage amounted to 57.23 per cent, while in 1906 the predomination of east-bound loaded car mileage over west-bound loaded car mileage amount to 43.40 per cent, and in 1907 to 3.2 per cent. This sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound loaded car mileage in the year ended June 1, 1907, was, however, not normal, but due to temporary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months.

The empty car movement westward predominates to a greater extent on the Great Northern and other lines on which the products of mines constitute a greater proportion of the traffic handled than forest products, than on the Northern Pacific line, which hauls a much larger percentage of forest products than do the other carriers. For the year ending June 30, 1907, the percentage of tonnage constituting all products of mines out of the total number of tons carried on the Great Northern Railway was 51.75 per cent, and all forest products 14.50 per cent. On the Northern Pacific the percentage of mine products out the total tonnage was 21.05 per cent, and of the forest products 37.38 per cent. A similar situation is shown to have existed on the Union Pacific system during the same period.

During all the period involved in this discussion, viz, from 1893 to November 1, 1907, the cost of operation of the complainants' roads has constantly increased. This increase is fairly illustrated by
149 the testimony of the witness R. I. Farrington relating to the cost of operation of the Great Northern road. He testifies: "Taking the year 1895 as one hundred per cent, the cost per freight train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course, in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as one hundred per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently, it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895."

Concurrently with this increase there has been a persistent and well directed effort on the part of all the carriers to wisely economize in the matter of cost of operation, and such results have been achieved as to preclude the idea that the increase in the cost of operation is due to any failure in wise and economic operation. The testimony clearly indicates that all these roads are wisely and economically handled, at least so far as cost of operation is concerned.

Since 1897 the lumber industry of this coast and Spokane territory has developed and increased so rapidly that it has constantly outrun the capacity of the roads to handle it, and these roads have been compelled ever since 1897 to spend vast sums in improvements, extensions, and for more powerful equipment in order to keep pace with the ever increasing east-bound traffic from those points. Other species of east-bound traffic have also increased, but the greatest increase is shown to be in the lumber traffic.

During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly
150 satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surplusses, and clearly appear to have been on the whole prosperous, and to have earned fairly satisfactory net incomes from their transportation.

By the orders here under discussion the commission restored the rates in force immediately prior to November 1, 1907, as far east as the so-called Pembina–Port Arthur line and to the territory east thereof, permitted an advance of 5 cents per one hundred pounds, which operated to fix a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and Duluth. By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was established. The short line distance over this system from Portland to Omaha is 1,799 miles, and to Kansas City and other Missouri River points is 2,030 miles. From the evidence and exhibits offered it fairly appears that this 50-cent rate over this system will result in a revenue of 5.56 mills per ton mile to Omaha and 4.92 mills per ton mile to Kansas City, and that such revenue is far below the average revenue per ton mile on any of the complainant roads, and that this 50-cent rate over this system to Omaha is a very low rate. The distance from Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, 2,052 miles, and from Astoria to St. Paul 2,072 miles. Omaha and St. Paul are on a parity as bases of through rates, and are so considered by the commission and by rate experts. (See commission's decision in Spokane v. Northern Pacific Ry. Co., decided June 7, 1910, 19 I. C. C. 162.) By the orders here under discussion the commission prescribed a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and
151 Duluth. This rate will undoubtedly result in a revenue to the northern lines measurably less than the revenue yielded to the Union Pacific line by the 50-cent rate to Omaha. Under the old 40-cent rate to St. Paul the revenue per ton miles accruing to the northern lines was 3.90 mills, and under the 50-cent rate installed November 1, 1907, would have been 4.87 mills from Portland to St. Paul. From Tacoma to Minneapolis under the 40-cent rate it was 3.98 mills per ton mile, and under the November 1, 1907, 50-cent rate it would have been 5.27 mills.

Evidence was offered by the Great Northern Railway Company and the Northern Pacific Railway Company for the purpose of proving the value of the systems of railroads owned and operated by each of said companies, respectively. This evidence consisted primarily of schedules of all items of physical property, based upon the present cost of reproduction. These schedules were prepared in great detail, and the evidence indicates that they are the result of extended examination of records of these companies, inspection of the properties, and consideration by competent experts of the various questions involved in an appraisal of this kind. These schedules were examined and checked by the defendant during a period of about six months pending the hearing of these cases. The record of the companies were open to the force employed by the defendant for that purpose, under the direction of an engineer selected by it, and while it is probable that in view of the large volume of records bearing upon the cost

of construction of various items of the property, the defendant was not able to fully examine all the records in that regard, it appears that they were thrown open to it and opportunity offered for as full and complete examination of them as it elected to make. At the conclusion of this examination the engineer selected by the defend-
152 ant appeared before the master and evidence produced by him is in the record. It is sufficient to say that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results reached are not widely apart from those reached by the engineers of the railroad companies.

Evidence was also offered by the two companies in question of the values of their properties based upon computations from market prices of stocks and bonds for fairly representative periods. This method of ascertaining the value of railroad property seems to have the support of a number of decided cases, and is of value in the consideration of questions of this character.

The record contains evidence of the amount of outstanding stocks and bonds of these two companies, together with a full showing for recent years of current results of operation. There are in evidence exhibits showing gross revenues, operating expenses, taxes, net revenues, amounts of interest paid upon obligations, dividends paid, amounts appropriated from income for various purposes, and in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures.

Of the methods made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved.

153 In the determination of the issues presented by these cases, involving as they do rates upon a single item of traffic, the value of the total properties of these companies is of only indirect bearing. The defendant commission appears to have reached this conclusion and to be of that opinion because in a case of like character involving rates on lumber from southern and southeastern points of production to the Ohio River and north thereof it held to that effect. (Central Yellow Pine Association v. Illinois Central Railroad Company, 10 I. C. C. 529.)

The master does not understand that these companies offer this evidence upon the theory that it will directly aid in the determination of the issues here involved. They do offer it for the purpose, as stated, of demonstrating that the return during recent years upon the fair value of these properties has not been and is not excessive; they

argue that if the rates upon lumber and other forest products embraced within their tariffs filed November 1, 1907, are neither unjust nor unreasonable, the results of the operation of these companies justify the effort thus made to increase revenues to meet increased cost of operation.

In the conclusion at which the master has arrived it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds.

The evidence clearly shows that these lines of railroad are well located and maintained; that they are efficiently operated and occupy a portion of the country from which it is reasonably plain that under normal conditions they may expect a constantly growing volume
154 of traffic; they seem to have, from the vitality of their own organizations, as well as that of the industries tributary to them, the cities, towns, and general character of the country through which they operate, all of the valuable elements ordinarily comprehended within the term "going concern," and from the fact that they have been established and in operation for many years and during recent years at least with fair results, they each have the advantage which flows from long and favorable relations with the shipping public over and above a new road or roads constructed or operated through the same territory. These considerations in every line of business indicate important elements of value over and above mere cost of construction, and justify the conclusion which is fortified by ample authority that there exist in these properties large elements of value of this character.

The defendant in these cases has directed attention to the annual reports of these companies and other forms of statistical information tending to prove favorable results from operation, and it is sufficient to say in considering the arguments thus advanced that they are largely supported by the statistics referred to, and lead to the necessary conclusion that the properties contain elements of value in large measure as a direct result of the successful operation referred to.

It may properly be said, however, in considering the arguments offered by the defendant that these companies have been able to pay interest and dividends at a fair rate and accumulate surplus funds which have been appropriated from income and reinvested in the property, that such conditions are necessary, within proper limits, in order to enable companies of this kind to meet the tremendous increases in cost of operation incurred in recent years and the growing demands upon them for increased facilities to accommodate the growing commerce of the country through which they pass. Upon
155 the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case the results from operation of either of these companies were in any degree excessive.

On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames, 169 U. S. 522, and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions.

CONCLUSIONS OF LAW.

Upon consideration, the master has adopted the following conclusions of law which, in his judgment, govern and control the decision of these cases:

(1) A just and reasonable rate within the meaning of the interstate commerce act is a rate which (a) furnishes to the carrier just compensation for the services rendered and fairly, reasonably, and justly recognizes and considers his common rights and interests in the traffic under consideration; (b) which fairly, reasonably, and justly recognizes and considers the interest of the public in such traffic; (c) which fairly, reasonably, and justly recognizes and considers the interests of the shippers in such traffic, and (d) which on its face does not manifest or evince any arbitrary violation, perversion, or disregard of the spirit or intent of the interstate commerce law, but appears to have been made or promulgated fairly, justly, and reasonably in accordance which the fundamental principles of the law.

156 (2) The Constitution guarantees just compensation for private property devoted to a public use and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation can not be predicated upon it.

(4) In determining the justness and reasonableness of the net returns to a railroad a principal consideration is the value of the property devoted to the public use; and in determining this value the reproductive value, or a just estimate of what it would presently cost to reproduce the properties as they presently stand, is of considerable material aid.

(5) But where the question under consideration is the justness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the

value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate.

157 (7) The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts.

(8) It is, however, limited in the exercise of its authority, first, by constitutional limitations, second, by specific limitations contained in its organic act, and third, by the spirit and intent of its organic act and the fundamental principles underlying its organic act.

(9) An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted.

(10) Federal courts of equity have the power and are charged with the duty to relieve from orders of the Interstate Commerce Commission which deprive complainants of their property without due process of law or take it without just compensation, from orders which are beyond the delegated power of the commission, and also from orders which evidence so unreasonable and arbitrary an exercise of its power and which are so inherently inconsistent with and violative of the spirit and intent of the interstate commerce act as to be substantially without, though formally within, their delegated authority.

(11) An order which on its face is inherently inconsistent with the fundamental principles of rational justice and palpably violates and perverts the spirit and intent of the interstate commerce act,

158 though in form within the limits of delegated power is in fact beyond those limits, and is an unlawful order, and one which results in taking of property without due process of law.

(12) On pages 39, 40, and 41 of volume one of the record appears certain objections entered by the defendant to the admission of evidence in these cases. Objection number one subdivided into sections A and B object to any testimony which does not show that the rate fixed by the Interstate Commerce Commission is confiscatory of the property of the carriers within the meaning of the fifth amendment to the Constitution of the United States and to any testimony which tends to show that such rate is otherwise (aside from the question of confiscation) unreasonable.

This objection is overruled for the reason that while a rate may not be confiscatory it may yet be so unjustly discriminatory and unduly preferential and may so arbitrarily violate the fundamental principles of rational justice and the spirit and intent of the interstate commerce act as to amount to the taking of property without due

process of law; and any evidence which tends to show such a situation is admissible and can be considered by the court.

Objection number two is based upon the claim that the allegations of the bills are not broad enough to amount to an allegation of confiscation.

This objection is overruled. The bills allege that the rates fixed by the commission are so unremunerative and so far below what is just and reasonable as to be confiscatory. I think the allegations are broad enough to admit of proof of confiscation. The Constitution provides that no property shall be taken for public use without just compensation. The interstate commerce act provides that all rates shall be just and reasonable. The language of these two pro-
159 visions means the same thing, and by these two provisions of law a point is fixed below which a carrier can not be compelled to go and above which it may not lawfully go. Anything less than that which is just and reasonable will necessarily amount to confiscation and therefore when a rate is attacked on the ground that it is less than that which is just and reasonable it is in effect an allegation of confiscation and permits the courts to inquire into the rate to the extent of ascertaining whether or not it is so low as to be less than just and reasonable.

Objection number three is based on the claim that no new and additional evidence is admissible for any purpose unless the complainants have first presented or offered to present the same to the commission for its consideration, or in effect taken such proceedings as amount to an application for a new trial.

This objection is overruled upon the authority of the court of appeals for the eighth circuit in Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, 164 Fed. 645, wherein it is held: "It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to an ascertainment of what was determined by the commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but on the contrary the hearing may be de novo, and may include the taking and consideration of evidence other than that before the commission."

Objections 4, 5, and 6 are elaborations of the principles sought to be enforced in objection number three.

Objection number four proceeds upon the principle that no new or additional evidence is admissible unless it is what is known in law as newly discovered evidence; that is, evidence unknown to the complainants at the time of the hearing before the commission.

160 Objections numbers 5 and 6 proceed upon the principle that no such newly discovered evidence can be offered unless it has previously been offered to the commission for its consideration and the commission has failed or refused to hear it.

The point of these objections is that it is unfair for a carrier to fail to take advantage of the opportunity offered under the law by the commission for a full hearing and thereafter apply to the courts to

protect it against orders which might never have been entered had the carriers so taken advantage of their opportunity for a full hearing.

In such a case a carrier would be without any standing in a court of equity, for he would not be coming into a court of equity with clean hands. But where it appears that a carrier honestly and in good faith has presented his case to the commission on a complaint, and in good faith presented to the commission for its consideration all the evidence then in its possession, it ought not to be, and is not, precluded from presenting to the courts in a suit for an injunction any other evidence relative and material to the suit of which it may avail itself. The objection seems to proceed upon the theory that a hearing before the commission is like a suit at law, and that the commission's decision is dependent upon the record, and that to disturb the decision by other evidence can only be done by the presenting of newly discovered evidence not within the knowledge and possession of the carriers at the time of the trial, and that the decision can only be disturbed on this ground by a proceeding before the commission analagous to a motion in a suit at law for a new trial upon the ground of newly discovered evidence.

This theory is quite at variance with the defendant's other theories and claims as to the powers of the commission. The commis-
161 sion is not confined in its decision to the consideration of the particular evidence submitted to it in any hearing, but is supposed to possess all knowledge and wisdom pertaining to the matters under consideration, and is at liberty to use all knowledge it may possess or obtain by any means both within and without the record. And the evidence actually submitted to the commission in any case is as a rule but a small part of the knowledge upon which the commission bases its decision. We think the court ought not to decline to hear a complainant on the ground that he has not first presented all his case to the commission, unless it appears that his failure in this respect amounted to a fraud on the commission and was a deliberate neglect to avail himself of the opportunities offered by the commission for a full hearing. Nothing of the kind appears in this case, and the objections to the new and additional evidence are overruled.

DISCUSSION.

"Section 1 of the act to regulate commerce" provides, among other things, "all charges made for any service rendered in the transportation of passengers and property * * * or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

This section further imposes upon common carriers the duty to furnish transportation at "just and reasonable rates applicable thereto."

Section 2 defines, prohibits, and declares unlawful any unjust discrimination between persons by means of special rates, rebates, drawbacks, or other devices, and section 3 declares it to be unlawful for

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any common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company, firm,
162 corporation, or locality, or any particular description of traffic in any respect whatever, or to subject such persons, entities, localities, or particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 15 provides that the commission is authorized and empowered and it shall be its duty whenever, after a full hearing upon a complaint made as provided in section 13 of the act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or discriminatory, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what practice or regulation in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that such carrier shall cease and desist from such violation to the extent to which the commission find the same to exist and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rates or charges so prescribed, and shall conform to the regulations or practice so prescribed. An analysis of this power and authority resolves it into three divisions. The commission has power to interfere (a) when rates are unjust and unreasonable, (b) when the rates and also the practices and conduct of the busi-
163 ness are unjustly discriminatory or unduly preferential, and (c) when specific requirements of the statute are violated.

And the remedies which they are authorized to determine and prescribe for the future are: (a) Just and reasonable rates, (b) just, fair, and reasonable regulations and practices, and (c) orders compelling the abandonment of illegal practices consisting in violations of specific requirements of the statute.

A principal question in these cases is as to the extent of the powers thus conferred on the Interstate Commerce Commission and particularly as to the extent of the powers stated in subdivision (a).

While the bills allege that the rates fixed by the commission are so low, unjust, and unreasonable as to result in an undue preference of the lumber traffic over other descriptions of traffic and discrimination in its favor against other species of traffic, still they nowhere point out any particular class or species of traffic which is discriminated against, and nowhere point out where, to what extent, or in what manner such discrimination is had, nor state any facts upon which discrimination and undue preference can be predicated.

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The substance of those allegations of the bills with which the master is concerned is that the rates fixed by the commission are so low and unremunerative as to be unjust and unreasonable, and therefore the commission exceeded their power in prescribing them, and are taking the carriers' property without due process of law, and, further, that because the rates are unjust and unreasonable and less than what is just and reasonable they are confiscatory and in violation of the constitutional guaranty of just compensation.

It will be seen, therefore, that the cases turn almost entirely upon the extent of the power conferred upon the commission to fix rates
164 for the future. The defendant claims that in the matter of fixing rates for the future under the circumstances and within the statutory requirements conferring jurisdiction to inquire (such as complaint, notice, full hearing, etc.) their power is as full, plenary, and absolute as is the power of Congress itself; that its reasons, motives, and discretionary powers may be as broad and plenary as those of Congress; and that its conclusions can only be attacked on constitutional grounds as a confiscation.

The complainants, on the other hand, claim that this power is a limited power, limited not only by the constitutional guarantees of just compensation and due process of law, but limited also by the terms and language of the statute itself, and that if it can be shown that any rate fixed by the commission is not just and reasonable, but is unjust and unreasonable in and of itself, it is an unlawful rate and beyond the power of the commission to prescribe or enforce.

The solution of this proposition depends entirely upon the interpretation to be put upon the words just and reasonable. If the interpretation of these words is to be based upon their widest sense, and upon all the reasons and considerations which Congress might entertain in the enactment of a statute including all grounds of public policy and all those considerations upon which rest the exercise of police power, then the position of the defendant is correct.

If, on the other hand, they are to be interpreted in a common and limited sense, and in a business sense, as applied to the business transactions between shippers and carriers, then this contention of the defendants is not correct, and the court may determine whether or not these rates are in truth and in fact in and of themselves just and reasonable and therefore lawful, or unjust and unreasonable and therefore unlawful, and in the latter event enjoin their
165 enforcement as an unlawful and unwarranted exercise of power which amounts to the taking of property without due process of law.

What, then, is a just and reasonable rate within the meaning of the interstate commerce act?

In the first place the Constitution supplies an absolutely essential and necessary ingredient or characteristic. It guarantees just compensation for private property taken for a public use, and any rate which violates this guaranty is a void rate. In Missouri, Kansas & Texas R. Co. v. Interstate Commerce Commission, a case from

the Eighth Circuit in 164 Fed., 645, the court said: "Its (the commission) determination or action does not and can not preclude judicial inquiry into the justness and reasonableness of the rates within the meaning of the constitutional guaranty, for that is a judicial question." "Neither Congress nor any legislative or administrative body acting by its authorization can competently establish rates for the transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all circumstances is just and reasonable, since such action would deprive it of its property without due process of law and would be a taking of its property for public use without just compensation in violation of the fifth amendment to the Constitution." Just compensation means the fair and reasonable value of the property taken. In condemnation proceedings it means the fair and reasonable value of the property for the highest use to which it can fairly and reasonably be put.

Applied to transportation rates, it must mean the fair and reasonable value of the particular service rendered, provided such services are rendered under normal circumstances. It is frequently said that regard must also be had to the rights of the public and to the interests of the shippers. In my judgment this means that a rate
166 may not be so high as to prevent the free access by the public to those commodities which they desire and require; or, in other words, so high as to prevent the free movement of the traffic, nor may a rate be so high as to practically divert a shipper's profit into the treasury of the carriers, and thus destroy the shipper's business. But these considerations are in a measure secondary, and can only apply after the first requisite of just compensation has been complied with. The prime consideration is the constitutional consideration of just compensation to the carrier. He is devoting his labor and property to a public use and under the law is compelled to do so. He may not refuse the traffic. He must respond to its demands. But for his service and his property he is entitled to just compensation, and no law can deprive him of it.

It is further said that just and reasonable rates need not necessarily guarantee a profit to the carrier. But this is simply another way of applying and illustrating the rule that a person is entitled to the fair and reasonable value of his property for the highest use to which it can reasonably and fairly be put.

Of course, a poorly and injudiciously projected road, which is not a reasonable commercial necessity, and is not commercially justified, and which is poorly and wastefully operated, can not expect to extort a profit out of the patrons which may be necessarily dependent upon it.

It is the value of the property for a reasonable use that is to be determined. An expensive house situated in the midst of a swamp would add no considerable value to the property, and the owner would not be entitled to a compensation for the cost of his house.

A house well located commercially may by ill usage depre-
167 ciate, and in determining its value for any purpose the expense of restoration would have to be considered and deducted.

Reasonable rates are therefore always to be based upon normal conditions, and determined with a view to whether or not the road is reasonably justified as a commercial enterprise, is a reasonable commercial necessity, is normally operated with reasonable economy and skill.

But when all is said of those characteristics of a just and reasonable rate, it is still true that the distinguishing characteristic of a just and reasonable rate is just compensation, and that these other characteristics are what is known in logic as incidental characteristics.

The constitution fixes this absolute point below which no carrier can be compelled to go. The interstate commerce act does not permit him to go above it. Anything more than this is a violation of this law, and anything less is a violation of the constitutional rights.

The next question is, How far does this distinguishing characteristic extend?

Inasmuch as it is the entire body of the property which is devoted to the public use, does this characteristic extend merely to the entire body of net revenues returned to the carriers, or does it extend to and characterize each particular rate and segregated element of the income?

In theory and on principle this latter proposition ought to be true. Each rate ought in and of itself, in order to be just and reasonable, furnish just compensation for the service rendered, and if each rate were just and reasonable the entire body of net returns would also be just and reasonable. In Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, cited above, the court said: "Reason-
168 ably interpreted the statute, by which alone the Interstate Commerce Commission derives its power, unmistakably requires that all rates prescribed thereunder shall be just and reasonable within the constitutional guaranty, and also that they shall not be unjustly discriminatory or unduly preferential; and those requirements plainly operate as limitations upon the power of the commission."

No doubt it is the spirit and intent of the interstate commerce act that each particular rate shall be in and of itself a compensatory rate, and that the theory of the statute is that if each rate is in and of itself just and reasonable the entire body of net returns will also be just and reasonable.

But because of the many stubborn and obtrusive difficulties in the way of the practical application of this proposition, because it is practically impossible with any degree of satisfactory accuracy to determine the cost of a particular traffic, or the proportion of the company's property devoted to its use, or whether or not in and of itself it yields a profit, and because also the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is some-

times necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy, it has been held in actions based upon the charge of confiscation through the reduction of a single rate or segregated portions of the general body of business, that this distinguishing characteristic of just compensation does not extend to a single rate, and need not be considered in determining whether or not it is just and reasonable, beyond the question as to whether or not it so affects the general body of net returns as to reduce them to less than just compensation.

In other words, confiscation cannot be predicated upon a single rate in and of itself, particularly because it is impossible
169 to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns.

It is contended that the following cases, decided by the judges of the Eighth Circuit and the Supreme Court, are authorities against this contention and establish the doctrine that a rate must be compensatory in and of itself. (Southern Ry. Co. v. St. Louis Hay Co., 214 U. S., 297; Stickney v. Interstate Commerce Commission, Supreme Court, January 10, 1910; Peavey & Co. v. Union Pacific Ry. Co. (Eighth Circuit), 176 Fed., 409.)

It will be observed, however, that those cases involved charges for incidental services rendered by and to carriers in aid of transportation, which charges are by the terms of the interstate commerce act required to be stated separately. The charges in the Hay case were charges for a special privilege "in no sense a part of the transportation and outside thereof."

The charges in the Stickney and Peavey cases were charges paid by the carriers to third persons who rendered services in aid of transportation, and section 15 of the interstate commerce act makes it the duty of the commission to determine the value of those services in and of themselves at a just and reasonable rate.

Manifestly an order made in the exercise of this power, absolutely or in part destroying an incidental charge considered to be just and reasonable in and of itself, is confiscation of the grossest kind
170 in addition to being a gross abuse and perversion of authority and the taking of property without due process of law.

It seems clear, therefore, that in cases involving a single rate, such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out.

The defendant claims that this conclusion must necessarily determine these cases in its favor. There is no evidence in the record clearly showing, or indeed attempting to show, that this lumber rate

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prescribed by the commission will so affect the general body of net returns as to materially reduce them from what they have been, and it is conceded on all sides that the carriers are and have been fairly prosperous, and that their net incomes have been fairly satisfactory at least.

The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory, and has not been performed for less than cost.

And the defendants claim that no confiscation having been shown it necessarily follows that the rates are just and reasonable.

It must be remembered, however, that this rule confining the inquiry as to confiscation in the matter of a single rate to the relation and effect of that rate to and upon the general body of net returns is not a rule based upon theoretical justice, but is a rule of convenience compelled by the exigencies of the situation. It is founded upon compulsion, and not upon principle. Furthermore, like all
171 other rules of law, it is intended and promulgated in the interests of justness and reasonableness, and not to promote injustice and unreasonableness. It cannot be used as a shield behind which the commission may hide, and with which they may protect themselves in the arbitrary and inequitable exercise of their powers. It is true the commission is an administrative body, exercising delegated legislative powers, and that the wisdom and expediency of the lawful discharge of their administrative powers may not be questioned by the courts.

Nevertheless, it must be remembered that the power of the commission to fix and determine rates is a limited power. In Missouri, Kansas & Texas Ry. Co. v. Interstate Commerce Commission, 164 Fed. 645, the court said: "Power to determine and prescribe what are just and reasonable maximum rates to charged in interstate commerce is in a limited way conferred on the Interstate Commerce Commission by section 15 of the interstate commerce act."

It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws.

But an administrative body is not so free to do as it pleases, but in addition to those specific limitations pointed out by the constitution and the particular provisions of its organic law, is always and forever limited and controlled by the spirit and intent and the fundamental principles of the organic law creating it. It may not, therefore, while acting within the forms of its delegated powers, promulgate rates and regulations which in effect violate the spirit and intent of those powers.

It is the intent and purpose of the interstate commerce act
172 that the commission shall determine and prescribe just and reasonable rates, just and reasonable regulations, just and reasonable conduct and practices, and shall prevent unjust discrimination and undue preferences.

It shall not make or permit any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or particular description of traffic "in any respect whatsoever," nor shall it subject such persons, entities, localities, or particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage "in any respect whatsoever."

They must not only be just and reasonable so far as the matter of compensation is concerned, but must be further just and reasonable in all respects. They must exercise their power in a just and reasonable manner and arrive at their conclusions through just and reasonable processes, and those conclusions must be just and reasonable in all respects. They may not be unjust and unreasonable in any respect whatsoever. They cannot content themselves with arriving at a result technically and in terms and form just and reasonable through an arbitrary, unjust, and unreasonable exercise of their powers. Justness and reasonableness must permeate, tincture, and characterize the entire proceeding, and the result must also be in truth, in spirit, and in fact just and reasonable, and not merely so in form and terms.

A rate may be unassailable on constitutional grounds, may be absolutely free from confiscatory features, and yet in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate commerce act.

A law passed in the interests of and to promote justness and reasonableness may not be used to perpetrate injustice and unreasonableness any more than the statute of frauds can be used as an instrument to perpetrate fraud.

173 For this reason there does inhere in the federal courts of equity power to review rates made by the commission above and beyond constitutional questions and questions as to the technical limits of delegated power, and to inquire whether or not the delegated power has been exercised in a just and reasonable manner, and within the true spirit and intent of the law, and to relieve from such orders as, though not technically confiscatory or discriminatory and not technically beyond the terms of the statute, are nevertheless so inherently inconsistent, unjust, unreasonable, and violative of common right as to be on their face unjust and unreasonable orders in the common sense of the terms.

In the case of the Interstate Commerce Commission v. Illinois Central R. R. Co., decided by the Supreme Court January 10, 1910, Mr. Justice White uses the following language: "Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider (a) all relevant questions

of constitutional power and right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz, whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power."

In Louisville & Nashville R. R. Co. v. Interstate Commerce Commission, decided April 9, 1910, by the Circuit Court for the
174 Western District of Kentucky, the court used this language: "If the order were so unreasonable or so manifestly unjust as to induce the belief that the fundamental principles of rational justice had been disregarded * * * it would be our duty to prevent such a consequence by awarding an injunction." In Peavey & Company v. Union Pacific Railway Company, recently decided by the judges of the eighth circuit, the court said: "The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts. But the power is vested in and the duty is imposed upon the circuit courts to relieve from orders of the commission which * * * though in form within its delegated power evidence so unreasonable an exercise of it that they are in substance beyond it." In Stickney v. Interstate Commerce Commission (164 Fed. 638, 644, 645) the court said: "The finding of facts on controverted and conflicting evidence by such bodies, when not brought about by fraud or mistake, is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded, or established without dispute admit of but one legal conclusion and a different and erroneous one is reached by reason of a misconception and misapplication of law by such bodies, their action is subject to review and may and ought to be avoided by the courts."

These decisions do not mean that the courts may substitute their own opinion for that of the commission. They do mean, however, that whenever an order is so inherently inconsistent with and violative of the fundamental principles of rational justice as to clearly evince an arbitrary disregard for and perversion of the true spirit and intent of the interstate commerce act, it is an unlawful and unauthorized order, and one from which the courts have power and are bound to grant relief.

175 Applying the principles arrived at in the foregoing discussion to the facts exhibited in the record, I am compelled to the following conclusions:

There is no evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations.

It does, however, appear that they are very low rates, and unusually favorable to the shippers and to the public.

In restoring the superseded rates to the Pembina-Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point.

If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found) then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates.

The difficulties and expenses of transportation over the Union Pacific line and the northern lines are fairly equal. The route over the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates.

The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable.

If, then, 50 cents to Omaha is just and reasonable 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly
176 prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities.

It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act, out of which their powers grow and in accordance with which their powers must be exercised.

These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5-cent per one hundred pounds differential to Chicago, while the northern lines are allowed 10 cents. And the 10-cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and
177 allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order.

In determining the issues before it the defendant ordered the rates from the coast territory to the so-called Pembina-Port Arthur line, and destinations west thereof, restored to the basis in existence immediately prior to November 1, 1907. To the territory east of that line it permitted an advance not to exceed 5 cents per hundred pounds over the rates in effect immediately previous to November 1, 1907. The defendant in this way presented the matter in a double aspect and in the consideration of the questions involved in these cases, the master has followed the same course and will state his conclusions in that order; that is to say:

(1) Does the evidence justify or require that the orders of the defendant, restoring the rates in existence prior to November 1, 1907, on and west of the so-called Pembina-Port Arthur line shall be enjoined; that is to say, does the evidence, giving to it all of the weight to which it is fairly entitled, overthrow the presumption that the orders in that regard are valid or, applying the test indicated by the recent decision of the Supreme Court of the United States in Interstate Commerce Commission v. Illinois Central Railroad Company et al. (— U. S., —), does the evidence establish that "the assertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power?"

(2) Turning to that portion of the orders setting aside the rates filed by the carriers and effective on November 1, 1907, to points east of the so-called Pembina-Port Arthur line, and in lieu thereof, permitting an advance over the preexisting rates not to exceed
178 5 cents per hundred pounds, and applying the same tests above referred to, are the results such as to lead to the necessary conclusion that the injunctive order of this court should issue?

Dealing with these questions in the order stated, it appears that in considering the conclusion reached by the defendant, the rate from the coast district to Omaha may be taken as illustrative.

The short line distance from Portland to Omaha is stated by the commission in its decision in the so-called Oregon case (No. 1327) to be 1,799 miles. From the exhibits offered before the commission it appears that this is substantially correct, and that the 50-cent rate restored by the orders of the commission results in revenue of

5.56 mills per ton mile. To Kansas City, another Missouri River point to which the same 50-cent rate applies, the distance appears to be 2,030 miles, with a resulting ton mile earning of 4.92 mills. Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low. That is not the duty of this court, however, and the action of the commission in ordering these and all other rates to this so-called Pembina line restored, and thereby approving them as just and reasonable, is to be tested by the rules hereinabove referred to.

The revenue per ton mile thus returned is much below the average revenue per ton mile derived from all commercial business on the lines of either of the complainants. It is below the average revenue per ton mile from lumber on the Union Pacific system for any of the recent years. It is substantially below average earnings
179 per ton mile on numerous other commodities, many of which may be denominated low grade in their character, moved over the Union Pacific system from Portland and coast points to Omaha and other eastern terminals. In the opinion of witnesses produced by the carriers, including the freight traffic manager of the Union Pacific Railroad Company, this 50-cent rate is unreasonably low. From what has been said above, it can not be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases, but it is the finding and conclusion of the master that the evidence upon this branch of the cases is not so clear and conclusive under the rules above referred to as to justify a recommendation that an injunction be issued against that portion of these orders.

The same finding and conclusion is reached regarding the rates generally to destinations on and west of the so-called Pembina-Port Arthur line. The master, therefore, recommends that the prayer for injunction against the orders of the defendant, disapproving the rates filed by the complainants to destinations on and west of the Pembina-Port Arthur line and requiring the restoration of the rates to these destinations in effect immediately prior to November 1, 1907, be denied.

In reaching its conclusion that the rates in question to Omaha and other points on the Pembina-Port Arthur line should be restored to the basis in effect just prior to November 1, 1907, it is to be presumed that the defendant acted under the authority delegated to it by the act to regulate commerce and the amendments thereto; it is to be presumed that thus acting under the delegated authority the defendant approved and established the preexisting rates as just and reasonable for the service involved. In fact, an examination of the opinions and orders of the defendant in these cases clearly shows that such
180 was the judgment of the defendant. As already seen, the defendant is without power to establish rates upon any other

basis, and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved the preexisting scale of rates to this line was, in the opinion of the defendant, just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative, and we are therefore furnished in these cases, by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina-Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Commerce Commission *v.* Illinois Central Railroad Company et al., *supra*, is not presented. Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant.

This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a greater distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable.

181 In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distance may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines.

It is therefore not unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded.

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It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between
182 Omaha and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. *v.* Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities generally to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that, in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in the coast territory, as well as the Spokane territory, on the other, should normally be upon an equal basis.

Thus the commission said in the case above cited:

"There is no condition of construction, or operation, or financial result which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the eastbound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration.

The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion and the equal relation of rates of long standing referred to in the oral argument between
183 these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike.

Before the commission in these proceedings, the complaining shippers urged that there should be equal rates upon this lumber traffic from the coast to St. Paul and to Omaha. These shippers urged that the 40-cent rate in effect to St. Paul and Minneapolis prior to November 1, 1907, should be applied to Omaha and the Missouri River territory generally, and it is fairly to be inferred that this position was taken in accordance with a conviction that conditions commercial, as well as otherwise, were so alike as to require equal rates.

From the deliberate conclusion, however, reached by the defendant that the 50-cent rate was just and reasonable upon this traffic to Omaha it is plain that the 40-cent rate asked by the shippers could not be.

Is it, therefore, possible in view of these various considerations to support the order of the defendant requiring the Northern Pacific and the Great Northern lines to withdraw the 50-cent rate made applicable by the tariffs of November 1, 1907, to St. Paul and common territory and to install instead a rate of 45 cents?

As its reasons for permitting an advance east of the Pembina-Port Arthur line, the defendant said in the so-called Washington case (No. 1329):

"To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton mile accruing to the carriers from this traffic."

The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pem-
184 bina-Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis and Duluth are east of the Pembina-Port Arthur line and, as already shown, traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which, under the commission's orders, take the 45-cent rate, is generally greater than the average distance between points where under the commission's orders the 50-cent rate applies.

The revenue per ton mile, however, according to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills, and under the 50-cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seem to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50-cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and therefore if the reason given by the commission for permitting an advance in rates to points east of the Pembina-Port

Arthur line seem to it to be of sufficient weight to authorize
185 their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable.

Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50-cent rate in and of itself is in anywise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate.

The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience in railroad traffic affairs and these witnesses expressing their opinion and adding reasons therefor were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the pre-existing rates, as well as the proposed rates and earnings therefrom, with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results while instructive as showing approximate or average results are not sufficiently
186 close to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars westbound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded.

A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates

approved by the commission to points on and west of the Pembina-Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina-Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders in
187 so far as they displace the rates contained in the tariffs of November 1, 1907, to points east of the Pembina-Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the preexisting rate, should be set aside and enjoined.

By the effect of the orders of the defendant finding the rates to points east of the Pembina–Port Arthur line to be unjust and unreasonable, the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

A large amount of testimony appears in the record, much of which was before the defendant and some of which was added in the hearings before the master, relating to the circumstances and conditions under which the rates on lumber between St. Paul and similar points and Chicago and points on the Mississippi River, including St. Louis, have been in the past made and controlled. It is said, and seems amply supported by the proof, that the rate of 10 cents from St. Paul to Chicago is made in competition with carriers of lumber on
188 the Great Lakes from Duluth to Chicago, and to some extent, so far as points on the Mississippi River are concerned, with carriers transporting lumber upon the Mississippi River. In the past it is probable that the lumber traffic on the Mississippi River had a larger effect upon the rates of the railroad lines competing therewith than at the present day, but from the history of the development of the lumber industry in the North it is plain that the rail rates from northern points, such as St. Paul and Duluth to Chicago and Mississippi Valley points to and including St. Louis, have always been

and are to-day affected and held to a low basis by the various forms of water competition referred to. The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points cannot be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. The 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied
189 via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents, whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the record to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha would be unjust or unreasonable for the transportation of this traffic from Omaha to Chicago. Considering all of the facts relating to the character of the 10-cent rate above referred to in its application between St. Paul and Chicago for the distance involved and under the conditions disclosed in the record, it cannot be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can

be sustained, and for the various reasons hereinbefore referred
190 to it is plain that this rate, whether applied via St. Paul or via Omaha, neither was nor is unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago.

There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions generally affecting rates to all such destinations; in fact in the orders of the defendant permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina–Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina–Port Arthur line other than as above indicated.

In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants and effective November 1, 1907, to points east of the so-called Pembina–Port Arthur line to be unjust and unreasonable cannot be approved; that the orders of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons cannot be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points east of
191 the so-called Pembina–Port Arthur line to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof be set aside and annulled.

By the order in the so-called Potlatch case (No. 1346), which is one of the orders sought to be enjoined in these proceedings, the defendant fixed rates from points in eastern Washington, eastern Oregon, and Montana to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the

same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907.

In the submission of testimony and in the arguments before the master, the questions presented by these cases have been considered principally with regard to the rate on fir lumber. That rate has been treated by both complainants and defendant as typical, and it has been so accepted and treated by the master in the foregoing findings. The relation between that rate and the rates on other lumber, shingles, and other forest products to points east of the Pembina-Port Arthur line was the same previous to November 1, 1907, and in the tariffs made effective on that date; and the orders of
192 the commission left that relation unchanged. No question is made by either party as to the fairness of this relation. From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended.

In accordance with the foregoing conclusions the master recommends the entry of decrees in each of the said cases in the form hereto attached.

FREDERICK N. DICKSON,
Special Master.

ST. PAUL, MINN., *Aug. 27, 1910.*

Filed August 27th, 1910. Henry D. Lang, clerk.

193 United States Circuit Court for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, *vs.* INTERSTATE COMMERCE COMMISSION.	Equity. No. 884.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in the two proceedings brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1329, and Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1335,

dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in that proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 27, 1908, and as further amended September 1, 1908; and the order of the defendant in that proceeding brought before it entitled Western Oregon Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908, and the order of the defendant in that proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, insofar as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points each of the line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorhead and Breckenridge, Minnesota; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Missouri; and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders insofar as they affect rates to points east of said lines.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
U. S. Circuit Judges.

194 And on the same day the following order noting the filing of the master's report was entered in said cause, to wit:

195 United States Circuit Court, District of Minnesota, Third Division. Chancery rule and order book.

GREAT NORTHERN RAILWAY CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} No. 885. Equity.

Aug. 27th, 1910.

And now comes Frederick N. Dickson, the duly appointed special master in chancery in the above entitled cause, and filed his report in the clerk's office of said court, under an order appointing him special master in chancery, which said filing is hereby entered and noted.

(Entered, C. R. "C," page 208.)

Thereafter and on the same day the following report of rulings upon exceptions and complainants' and defendant's exceptions were filed in said cause, to wit:

196 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

197 By order of the court above named, entered therein on the 13th day of February, 1909, the above entitled causes were referred to the undersigned, as special master in chancery, to take and report to said court the evidence, to examine the same, to make necessary computations, to find and state the facts in said causes, and to report advisory conclusions of law and recommend a proper form of decree therein.

Pursuant to said order, the testimony in said causes was taken and has been returned and filed in said court. And after hearing arguments of counsel, and on consideration, the undersigned, as such special master, did, on the 22nd day of July, 1910, pursuant to the terms of said order, exhibit to counsel his preliminary report and delivered to them copies thereof.

Thereupon, upon stipulation of the parties, it was ordered that said respective parties file with the undersigned on or before the 19th day of August, 1910, their objections and exceptions to said preliminary report, if any they had, and upon the 19th day of August, 1910, the defendant in said causes filed with the undersigned exceptions, a true copy of which is hereto attached and marked Exhibit "A," and the complainants filed with the undersigned exceptions, a true copy of which is hereto attached and marked Exhibit "B."

After hearing arguments of counsel and upon consideration, the master rules as follows upon said exceptions:

Defendant's exception No. 1 is overruled for the reason that the matter therein excepted to is fully covered in the specific finding of fact No. IV, and the suggested finding of fact is partial and unfair.

Defendant's exception No. 2 is overruled. The difference between the finding and the suggested finding is one of degree, and in the master's judgment the finding excepted to is amply sustained by the evidence.

198 Defendant's exception No. 3 is overruled. The suggested finding that at the time of the installation of the 40-cent rate it was not known whether there would be an empty east-bound car movement, is not sustained by the evidence, and under the circumstances existing at that time, is obviously untrue.

Defendant's exception No. 4 is allowed and the master's report modified accordingly.

Defendant's exception No. 5 is allowed and the master's report modified accordingly.

Defendant's exception No. 6 is overruled. The finding objected to is sustained by the evidence and the suggested finding is amply covered in other portions of the report.

Defendant's exception No. 7 is overruled for the reason that it is not sustained by the evidence.

Defendant's exception No. 8 is overruled. The finding objected to is, in the master's judgment, amply sustained by the evidence and the suggested finding that there is no satisfactory explanation of the sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound car mileage in the year ending June 1, 1907, is not true. In the master's judgment the explanation was ample.

Upon argument, the defendant withdrew exception No. 9 objecting to the recital of the testimony of R. I. Farrington. The finding suggested in exception No. 9 is refused as not being sustained by the evidence.

Defendant's exception No. 10 is refused as not being sustained by the evidence.

Upon argument in reference to defendant's exceptions Nos. 11 and 12 it was agreed that the requirements of these exceptions would be met by inserting the percentages of dividends paid in recent years by the complainants' roads and the master's report has been modified accordingly.

Defendant's exception No. 13 is overruled. To say that the 50-cent rate involved was not established by the order of the com-
199 mission because it had theretofore been in effect is a quibble. Upon the consideration of the case it was the commission's duty to prescribe the maximum rate for the future, and they did prescribe this rate and thereby established it.

Defendant's exception No. 14 is overruled. The finding objected to is amply sustained by the evidence.

Defendant's exceptions Nos. 15 to 24 inclusive are each and all of them exceptions to various findings of fact in the master's report, and are objected to on the ground that they are not sustained by the evidence or are immaterial. Each and all of these exceptions are overruled by the master for the reason that in his judgment they are all amply sustained by the evidence and are material and relevant.

Defendant's requested finding of fact No. 1 is refused on the ground that it is not sustained by the evidence.

Defendant's second requested finding of fact is refused on the ground that it is not sustained by the evidence.

Defendant's third requested finding of fact is refused. The application of a 45-cent rate referred to in the second paragraph is not as stated in said paragraph and the requested finding is not sustained by the evidence.

The defendant's fourth requested finding of fact is refused on the ground that it is immaterial and does not support the conclusion therein arrived at.

Defendant's fifth requested finding of fact is refused on the ground that it is not sustained by the evidence. While the master has found that the general net returns of the carriers have been fairly satisfactory and has also found that there is no evidence in the case tending to show that the rates charged upon lumber were confiscatory, he has also found that the rates charged upon lumber were very low rates. The finding herein amounts to an affirmative finding that the carriers have been receiving adequate compensation for their
200 lumber traffic. In the master's judgment the evidence does not sustain such finding.

Defendant's sixth requested finding of fact is refused, because not sustained by the evidence.

Defendant's seventh requested finding of fact is refused. While some of the statements therein contained are true, the finding, as a whole, is immaterial.

Defendant's eighth requested finding of fact is refused as immaterial and already covered by the findings of fact. The master has expressly found that there is no evidence showing the relation and effect of the lumber rate upon the general body of net returns.

Defendant has filed 37 specific exceptions to the master's conclusions of law, numbered 1 to 37, inclusive, in which defendant takes exception to the conclusions which the master has arrived at in his report. All these various conclusions assailed by these exceptions are

sufficiently explained in the master's report and said exceptions are each and all of them overruled for the reason stated in the report.

Exception No. 35 of the conclusions of law raises the question whether or not the court has the power to modify the commission's orders in the manner attempted in the decrees recommended herein, it being the contention of the defendant that the court has no power to do anything further than either to enjoin the commission's orders in toto, or sustain them in toto.

This exception is specifically overruled. The commission dealt with the rates in question in a twofold manner, dividing their application by the so-called Pembina-Port Arthur line and applying a different rule to the territory east and west of said line. If this is a justifiable basis of division the court has a right to deal with the matter on such basis.

Referring to complainant's exceptions, exception 1 is par-
201 tially allowed and the master's report has been modified to the extent of limiting the period covered by said finding to a period beginning in the year 1901. Aside from this modification the exception is overruled.

Exception II is overruled. The master adhers to his original conclusions in this respect and thinks that the reasons for his position are sufficiently explained in his report.

Exception III is also overruled for the same reason.

Exception IV is also overruled for the same reason.

Exception V is also overruled for the same reason.

Exception VI is also overruled for the same reason.

Herewith the master files his final report of said causes, containing the modifications allowed hereinbefore.

Dated at St. Paul, Minn., this 27th day of August, 1910.

FREDERICK N. DICKSON,
Special Master in Chancery.

202 EXHIBIT A.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon, California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

Objections and exceptions taken by the above named defendant to the report of the special master herein, to whom these cases were referred to take proofs and report thereon.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant United States Atty.
Solicitors for Defendant.

203 Comes now the Interstate Commerce Commission, defendant in the above named cases, by its solicitors, and objects to the report of Hon. Frederick M. Dickson, special master herein, and excepts to the findings of fact and conclusions of law hereinafter set out.

(1) For that the master erred in that part of his report, page 12, wherein he stated:

"For the purpose of providing loads for the eastbound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul."

The master should have found substantially as follows:

"For the purpose of providing additional revenue and believing that 40 cents was reasonable compensation to begin with, the railroads installed the old 40-cent rate to St. Paul." (Rec., 1274, 1275.)

(2) For that the master erred in the following statement, page 12:

"The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry."

He should have found:

"The lumber industry in the coast district has grown to enormous proportions and has become a prosperous industry." (Rec., 1045, et seq.)

(3) For that the master erred in the statement of his finding of Fact IV, page 15, wherein he stated:

"The superseded rates were made voluntarily by the carriers in 1893, avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads and more particularly and immediately for utilizing an eastbound empty car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well defined eastbound empty car movement from the coast."

The master should have found:

"The superseded rates were made voluntarily by the car-
204 riers in 1893, as alleged at the hearing, for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads which would furnish adequate revenue under the circumstances. The 40-cent rate was first made by the Great Northern Railroad and was announced several months prior to the date when that railroad was opened for business from Seattle. At the time the 40-cent rate was established it was not known whether there would be an empty eastbound car movement." (Rec., 1274, 1275.)

(4) For that the master erred in line 11, page 17, wherein he used the word "mills." He should have used the word "materials." (14 I. C. C., 4.)

(5) For that the master erred in failing to insert after the word "feet," in line 15, page 17, the following:

"Valued at the mills at $30,000,000.00." (14 I. C. C., 4.)

(6) For that the master erred in the finding, page 19, first paragraph:

"At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business."

The master should have found:

"Even before the financial depression was felt on the Pacific coast, the lumber industry was greatly depressed and operations were largely decreased." (14 I. C. C., 7; Rec., 402.)

(7) For that the master erred in failing to insert after the word "cent" line 3, page 21, the following:

"At the time the 40-cent rate was established to St. Paul the empty car movement was not a fact to be considered in *in* making the rate." (Rec., 1274, 1275.)

(8) For that the master erred in his finding, beginning line 4, page 22, as follows:

"This sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound loaded car mileage in the year ended June 1, 1907, was, however, not normal, but due to
205 temporary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months."

The master should have found:

"There is no satisfactory explanation of this sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound car mileage in the year ending June 1, 1907. The complainants, however, advance the theory that it was occasioned in a large degree by the carriage of supplies for the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, to storms, snowfall, and excessive cold weather in the winter of 1906 and 1907. There is no evidence as to the empty car movement or the movement of east or west bound loaded cars during the years ending June 1, 1908, and June 1, 1909; nor is there any evidence as to the cost of handling or the revenue resulting from handling the lumber traffic subject to the order complained of in these cases. The evidence to show these facts is all in the possession of the complainants." (14 I. C. C., 16, 33.)

(9) For that the master erred in the following finding, beginning line 2 from the bottom of page 22:

"This increase is fairly illustrated by the testimony of the witness R. I. Farrington relating to the cost of operation of the Great Northern road. He testifies: 'Taking the year 1895 as 100 per cent, the cost per freight train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course, in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as 100 per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895.'" (Equity Rule 76.)

The master should have found instead thereof:

"While the cost of operation has constantly increased, the economy of operation has kept pace therewith. The minimum
206 carload of lumber has greatly increased, engines haul much heavier trains, roadbeds have been improved so that the cost of hauling a single unit compared with the revenue therefrom is much less than in 1893." (Rec., 754, 761.)

(10) For that the master erred, finding XV, page 23, line 20, in failing to insert after the word "industry" the following: "and other traffic." (Rec., 1441.)

(11) For that the master erred, finding XVI, page 23, in inserting in the last line on said page the word "fairly."

(12) For that the master erred in inserting the word "fairly," line 3, page 24.

(13) For that the master erred in finding XVII, page 24: "By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina-Port Arthur line was established."

That finding should have been:

"By this order the rate of 50 cents per one hundred pounds, previously and for many years in effect, over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was not disturbed." (14 I. C. C., 1 et seq.)

(14) For that the master erred in the finding, line 19, page 24:

"And that such revenue is far below the average revenue per ton mile on any of the complainants' roads, and that this 50-cent rate over this system to Omaha is a very low rate."

(15) For that the master erred in the finding, line 25, page 24:

"Omaha and St. Paul are on a parity as bases of through rates, and are so considered by the commission and by rate experts." (See commission's decision in Spokane v. Northern Pacific Railway Company, decided June 7, 1910, 19 I. C. C., 162.)

(16) For that the master erred in the finding, beginning last line, page 24:

207 "This rate will undoubtedly result in a revenue to the northern lines measurably less than the revenue yielded to the Union Pacific Line by the 50-cent rate to Omaha."

(17) For that the master erred in inserting in line 25, page 25, the following:

"While it is probable that."

(18) For that the master erred in his finding, beginning line 1, page 26:

"It is sufficient to say, that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent

that the results reached are not widely apart from those reached by the engineers of the railroad companies." (Rec., 781 et seq.)

The finding is upon a matter wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

(19) For that the master erred in inserting in line 24, page 26:

"And in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures."

(20) For that the master erred in his finding, last paragraph, page 26:

"Of the method made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved."

The finding is upon a mat'er wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

(21) For that the master erred in the following finding, page 27, third paragraph:

208 "In the conclusion at which the master has arrived, it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds."

This finding is not supported by the evidence in the record.

(22) For that the master erred in inserting the word "fair" in line 25, page 28.

(23) For that the master erred in the following finding, last line, page 28:

"Upon the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case the results from operation of either of these companies were in any degree excessive." (Rec., 646, 647, 14 I. C. C., 7.)

(24) For that the master erred in the following finding, line 5, page 29:

"On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames, 169 U. S., 522, and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions."

There is no evidence of original cost of construction, amount expended in permanent improvements, present cost of construction

compared with original cost of construction, the probable earnings upon the rates complained of, or operating expenses probable during life of order.

209 REQUESTED FINDING OF FACT.

The defendant objects and excepts to the failure of the special master herein to make each and every of the following findings of fact:

1. The rates provided for in the schedules to become effective November 1, 1907, were enjoined by the Circuit Court of the United States, having jurisdiction, and the same were never collected by the complainants herein. Shippers of lumber continued to pay the rates in effect prior to November 1, 1907, and no part of the revenues of the carriers were due to the increase in lumber rates provided for in November 1, 1907. (Complainant's Brief, 3.)

2. The net returns per mile of railroad for each of complainants was much greater at the time of the hearing before the commission than they were ten years before. Freight-car capacities had greatly increased, much larger train tonnage was hauled, train crews handled much more tonnage, engine capacity had greatly increased and much more than kept pace with the increased cost of labor or of construction. (Rec., 754, 761.)

3. The 50-cent lumber rate over the Union Pacific Railroad covers as a blanket rate all points from Medford, Oregon, 350 miles south of Portland, to Cascade Locks, 45 miles east of Portland, the center of origin being 152 miles south of Portland; this rate covers as blanket rate all destination points from Brule, Nebraska, 350 miles west of Omaha, to Omaha, the center of destination being 175 miles west of Omaha. The distance from the center of origin to center of destination is 1,676 miles. The per ton mile rate for the average distance is 5.96 mills.

The 45-cent lumber rate over the Northern Pacific covers as a blanket rate all points of origin from South Bend, Wash-
210 ington, to , 143 miles east of Tacoma, the center of origin being 16 miles east of Tacoma; this rate covers as a blanket all points of destination from Glendive, Montana, 676 miles west of St. Paul, to St. Paul, the center of destination being 338 miles west of St. Paul. The distance from center of origin to center of destination being 1,558 miles. The per ton mile rate is 5.78 mills. (Rec., 938, 1443.)

On all shipments to Chicago via Omaha upon which the rate is 55 cents, the Union Pacific receives for its haul only 45 cents. On all shipments to Chicago via St. Paul on which the 55-cent rate applied, the Hill lines received for the haul to St. Paul 45 cents.

4. Rates have been voluntarily put into effect and are now in effect from Spokane to Winnipeg over the Northern Pacific and the Canadian Northern and the Great Northern and the Canadian Northern of 37 cents per one hundred. Via the Northern Pacific the distance is

1,545 miles. Via the Great Northern, 1,356. From Bellingham, Washington, via the Northern Pacific to Winnipeg the distance is 2,094.3 miles, and the rate is 40 cents per one hundred pounds, out of which three cents is paid to the local road from Bellingham to Sumas Junction, 23.3 miles, leaving 37 cents to be divided between the Northern Pacific and Canadian Northern for 2,071 miles. The same condition prevails from points on the Tacoma and Eastern to Winnipeg, where out of a rate of 40 cents for a haul of 1,491 miles the Northern Pacific received as its share 36 cents. From Kendall, Washington, the rate via the Northern Pacific or Great Northern and Bellingham Bay and British Columbia Railroad, the first named carrier receives out of 40 cents 37½ cents for a haul of 2,071 miles over the Northern Pacific and 1,817 miles over the Great Northern. (See defendant's brief, 272.) When these rates and distances are compared with a haul of 1,564 miles to Jamestown, North Dakota,
211 on the Northern Pacific and 1,896 miles to Minneapolis over the same road and with substantially similar distances over the Great Northern, upon which a rate of 45 cents has been prescribed by the commission, it would appear that the 45 cent rate is a very liberal rate for the carriers.

5. From a careful examination of all the evidence I find nothing of any importance showing, or tending to show, that the complainants herein are not receiving adequate compensation for the services which they rendered the public. Any injunction against the order of the commission will operate to increase the revenue of the complainants beyond anything they have yet received upon lumber traffic. No statement is made by complainants, or any of their witnesses, that if an injunction is granted, thereby increasing the revenue of the carriers, there will be any reduction on any other commodities or any class of traffic. Nothing save opinion evidence is given upon the question of remuneration of the particular rates here under investigation. The commission prescribed 45 cents as a reasonable rate for the haul to St. Paul and Minneapolis. Measured by this standard and by the rates charged upon lumber over the lines of these complainants and of other carriers, the rates prescribed by the commission in no sense are less than the carriers are entitled to.

6. The evidence does not disclose whether the conditions and circumstances surrounding the movement of traffic from the Pacific coast to Omaha are similar or dissimilar to those appertaining to the haul from Pacific coast points to St. Paul and Minneapolis, except the elevation is much greater over the Union Pacific than over the Great Northern and Northern Pacific. (Rec., 1023.)

7. The record fails to disclose the amount of the tonnage subject to the commission's order which is hauled by complainants. It does appear that during the year ending June 30, 1907, of the whole amount of tonnage hauled by the complainants, products of
212 the forest constituted on the Union Pacific 7.86 per cent, on the Northern Pacific 37.38 per cent, on the Great Northern 14.8 per cent. How much of this percentage is carried at rates pre-

scribed by the commission does not appear. These percentages cover both State and interstate east-bound and west-bound movement. The commission's order applies only to interstate east-bound. (14 I. C. C., 16.)

8. Lumber is a low-grade commodity, is loaded and unloaded by the shipper, requires but little service, loads far beyond the average per car, and upon the whole is very desirable traffic. I find no evidence which shows or tends to show other than mere opinions of interested parties that lumber subject to the orders herein does not pay its fair proportion of the income which the complainants have or should have.

CONCLUSIONS OF LAW.

Defendant objects and accepts to the following conclusions of law made by the special master herein:

(1) For that the master erred in the 9th conclusion, page 31, wherein he stated the law as follows:

"An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted."

(2) For that the master erred in overruling each and every objection entered by defendant to the admission of evidence as shown on pages 39, 40, and 41, of volume 1, of the printed record herein.

(3) For that the master erred in holding, line 18, page 42:

" That the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy."

213 (4) For that the master erred in holding, line 18, page 45:

" It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws."

(5) For that the master erred in holding, line 1, page 47, that there does inhere in the Federal courts of equity power to review rates made by the commission to determine " whether or not the delegated power has been exercised in a just and r'asonable manner."

(6) For that the master erred in reaching the following conc'usions, paragraph 3, page 49:

" It does, however, appear that they are very low rates and unusually favorable to the shippers and to the public."

(7) For that the master erred in reaching the following conclusion, paragraph 4, page 49:

" In restoring the superseded rates to the Pembinal-Port Arthur line, including the old 50-cent rate over the Union Pacific system to

Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point."

(8) For that the master erred in reaching the following conclusion, paragraph 5, page 49:

"If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates."

(9) For that the master erred in reaching the following conclusion, paragraph 6, page 49:

"The difficulties and expenses of transportation over the Union Pacific line and the Northern lines are fairly equal. The route over the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates."

214 (10) For that the master erred in reaching the following conclusion, paragraph 7, page 49:

"The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable."

(11) For that the master erred in reaching the following conclusion, paragraph 8, page 49:

"If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities."

(12) For that the master erred in reaching the following conclusion, line 7, page 50:

"It will be said that the 45 cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate

commerce act out of which their powers grow and in accordance with which their powers must be exercised."

(13) For that the master erred in reaching the following conclusion, line 22, page 50:

"These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5 cents per one hundred pounds differential to Chicago while the northern lines are allowed 10 cents. And the 10 cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order."

(14) For that the master erred in the following conclusion, line 16, page 52:

"Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low."

(15) For that the master erred in reaching the following conclusion, line 6, page 53:

"From what has been said above, it cannot be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases."

(16) For that the master erred in reaching the following conclusion, beginning last line, page 53:

"As already seen, the defendant is without power to establish rates upon any other basis and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved, the preexisting scale of rates to this line was, in the opinion of the defendant, just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative and we are, therefore, furnished in these cases, by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina–Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Commerce Commission v. Illinois Central Railroad Company et al., supra, is not presented? Stated differently the inquiry is whether the act

of the defendan*tn*, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant?"

(17) For that the master erred in reaching the following conclusion, beginning line 27, page 54:

"This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a great distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable."

(18) For that the master erred in reaching the following conclusion, beginning first line, page 55:

"In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in conside'ing the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distances may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from
217 Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines."

(19) For that the master erred in reaching the following conclusion, beginning 20th line, page 55:

"It is not therefore unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded."

(20) For that the master erred in reaching the following conclusion, line 23, page 55:

"It will be recalled that prior to the reduction in 1893, by the Great Northern, the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive and market conditions of a special or exceptional character. It is

understood that upon many other items of traffic rates between Omaha and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities generally to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand and points in the coast territory, as well as the Spokane territory, on the other, should nominally be upon an equal basis.

Thus the commission said in the case above cited:

There is no condition of construction or operation or financial result, which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

218 (21) For that the master erred in reaching the following conclusion, line 21, page 56:

"While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the east-bound traffic to Omaha as compared with the east-bound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration."

(22) For that the master erred in reaching the following conclusion, line 29, page 56:

"The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike."

(23) For that the master erred in reaching the following conclusion, line 22, page 57:

"As its reasons for permitting an advance east of the Pembina-Port Arthur line, the defendant said in the so-called Washington case (No. 1329):

"To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton mile accruing to the carriers from this traffic."

(24) For that the master erred in reaching the following conclusion, line 29, page 57:

"The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pembina-

Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina-Port Arthur line and as already shown traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the Northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which, under
219 the commission's orders take the 45 cent rate, is generally greater than the average distance between points where, under the commission's orders, the 50 cent rate applies."

(25) For that the master erred in reaching the following conclusion, line 11, page 58:

"The revenue per ton mile, however, accruing to the Great Northern and Northern Pacific lines, even under the 50 cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50 cent rate approved to that point. Under the 40 cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50 cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40 cent rate the revenue per ton mile was 3.98 mills, and under the 50 cent rate would be 5.27 mills. Under the 50 cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seems to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50 cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina-Port Arthur line seem to it to be of sufficient weight to authorize their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50 cent rate to St. Paul as just and reasonable."

(26) For that the master erred in reaching the following conclusion, line 4, page 59:

"Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50 cent rate in and of itself is in anywise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate."

220 (27) For that the master erred in reaching the following conclusion, line 12, page 59:

"The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience

in railroad traffic affairs, and these witnesses expressing their opinion and adding reasons therefor were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the pre-existing rates, as well as the proposed rates and earnings therefrom, with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results while instructive as showing approximate or average results are not sufficiently close to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars west-bound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded."

(28) For that the master erred in reaching the following conclusion, line 12, page 60:

"A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by
221 the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result, as above indicated, that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates approved by the commission to points on and west of the Pembina–Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina–Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders, in so far as they displace

the rates contained in the tariffs of November 1, 1907, to points east of the Pembina–Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the pre-existing rate, should be set aside and enjoined."

(29) For that the master erred in reaching the following conclusion, line 6, page 61:

"By the effect of the orders of the defendant finding the rates to points east of the Pembina–Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

222 (30) For that the master erred in reaching the following conclusion, line 12, page 62:

"The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and; therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points cannot be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. This 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow

all or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents, whereby it appears that out of the rate proposed of 60 cents to Chicago, the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the records to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha would be unjust or unreasonable
223 for the transportation of this traffic from Omaha to Chicago.

Considering all the facts relating to the character of the 10-cent rate above referred to, in its application between St. Paul and Chicago, for the distance involved and under the conditions disposed in the record, it cannot be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha, the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago, can be sustained, and for the various reasons hereinbefore referred to it is plain that this rate, whether applied via St. Paul or via Omaha, neither was, nor is, unjust or unreasonable. If 50 cents was, as determined by the commission just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago."

(31) For that the master erred in reaching the following conclusion, line 6, page 64:

"There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions, generally, affecting rates to all such destinations; in fact in the orders of the defendants permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina-Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair, and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina-Port Arthur line other than as above indicated."

(32) For that the master erred in reaching the following conclusion, line 19, page 64:

"In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants, and effective November 1, 1907, to points east of the so-called Pembina-Port Arthur line, to be unjust and unreasonable cannot be approved; that the orders of

224 the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons cannot be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points east of the so-called Pembina-Port Arthur line, to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof, be set aside and annulled."

(33) For that the master erred in reaching the following conclusion, line 4, page 65:

"By the order in the so-called Potlatch case (No. 1348), which is one of the orders sought to be enjoined in these proceedings, the defendants fixed rates from points in eastern Washington, eastern Oregon, and Montana, to points east of the Pembina–Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina–Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina–Port Arthur line by the tariffs effective November 1, 1907."

(34) For that the master erred in reaching the following conclusion, line 2, page 66:

"From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of the Pembina–Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended."

225 35. Defendant objects and excepts to the proposed decree of injunction for that the same is a modification of the commission's order, while the statute does not confer upon the court power to act other than upon the order as a whole by enjoining, suspending, or sustaining the same in toto.

36. For that the master erred in recommending entries of decrees of injunction in each of the said cases in the form used in said report.

37. For that the master erred in failing to recommend decrees dismissing the bills of complainant in each of the said causes.

Wherefore, defendant, by its solicitors, respectfully prays that in all of which particulars herein set out the report be varied and altered so as to conform to the facts and the law applicable thereto.

LUTHER M. WALTER,
CHARLES C. HOUPT,
Solicitors for Defendant.

J. N. TEAL,
W. A. WIMBISH,
Of Counsel.

226 EXHIBIT B.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 883.

NORTHERN PACIFIC RAILWAY COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 884.

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 885.

Complainants' exceptions to master's report.

Come now the complainants and make the following exceptions to the report of the master, dated July 22, 1910:

I.

They except to that finding and conclusion of the master appearing on page 13 of the report as printed, reading as follows:

"It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements, and in addition thereto have accumulated large surplus funds."

And to that finding and conclusion of the master appear-
227 ing on pages 23 and 24 of the printed report, reading as follows:

"During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surpluses, and clearly

appear to have been on the whole prosperous, and to have earned fairly satisfactory net incomes from their transportation."

upon the ground that it appears from the testimony that the earnings of the Northern Pacific Railway Company and of the Great Northern Railway Company during the periods referred to in said findings have not yielded a fair return upon the fair value of the property of said companies devoted to railroad uses. The evidence further shows that the properties of the Northern Pacific Company were in an insolvent condition and in the hands of receivers during a portion of the time down to the year 1896, and that the properties of the Union Pacific system were likewise insolvent and in receivers' hands during a portion of the time down to the year 1898.

The evidence showing the cost of reproduction of the Great Northern railroad system contained in complainants' Exhibit 15, Hogeland, page 435, printed transcript of record; the evidence showing the value of the Great Northern system computed upon average market price of stocks and bonds for the period of five years ended June 30, 1908, introduced in evidence under stipulation and printed in complainants' reply brief, page 51, and complainants' Exhibit A, Great Northern, at pages 653 to 664, inclusive, of printed transcript of record, showing gross earnings, operating expenses, taxes, net earnings, and net income from operation show that the net earnings upon the fair value of the properties of that company for the years 1904 to 1908, both inclusive, to have been less than a fair return upon the value of such properties.

228 The findings of the cost of reproduction of the Northern Pacific Railway Company, appearing in complainants' Exhibit 4, pages 116 to 135 of record, and the findings of the value of the property computed upon the basis of the average market value of bonds and stocks of said company for a period of five years, introduced in evidence by stipulation and printed on page 52 of complainants' reply brief, and the findings as to the earnings of said property during the entire period from its reorganization in 1896 down to and including the fiscal year 1909, appearing in complainants' Exhibit 22, page 595, of printed transcript of record, showing that the earnings from said property during the said period had not yielded a fair return upon the fair value thereof.

II.

They except to that finding and conclusion of the master, appearing on page 14 of the printed copy of the report, reading as follows:

"The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess

and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them we think this evidence so remote and speculative as to be absolutely immaterial in this case."

And further except to paragraps 5 and 6 of the conclusions of law upon page 30 of the printed copy of the report reading as follows:

"(5) But where the question under consideration is the just-
229 ness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

"(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate."

for the reason that the master erred as a matter of law in holding that the evidence of the cost of reproduction of the Northern Pacific and Great Northern systems is so remote and speculative as bearing upon the particular rate as to be immaterial. The master erred in holding that upon the evidence thus introduced a finding based thereon would be merely a guess. The master erred in holding that the cost of reproduction of said properties was so remote and speculative as to be immaterial in determining the ultimate fact of the real value of said properties.

III.

They except to that finding and conclusion of the master, appearing on page 21 of the printed copy of the report, reading as follows:

"Ever since 1903 the condition in respect to the predominance of empty car mileage has been changing until in 1907 the west-bound empty car movement greatly predominated over the east-bound empty car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East."

for the reason that, as shown in Great Northern Exhibit 27, page 613, and Maguire Exhibit 3, page 1485, and in Northern Pacific Exhibit 25, at page 604, all in the printed transcript of record,
230 it appears that almost the entire volume of east-bound tonnage consisted of lumber and shingles during the year 1907.

IV.

They except to those findings and conclusions of the master, appearing on page 30 of the printed copy of the report, reading as follows:

"(2) The Constitution guarantees just compensation for private property devoted to a public use, and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

"(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation can not be predicated upon it."

and to those findings and conclusions of the master, appearing on pages 42 and 43 of the printed copy of the report, reading as follows:

"In other words, confiscation can not be predicated upon a single rate in and of itself, particularly because it is impossible to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns."

And to that finding and conclusion of the master, appearing on page 44 of the printed copy of the report, reading as follows:

"It seems clear, therefore, that in cases involving a single rate, such as are the cases at bar, unless it is clearly shown
231 that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out."

upon the ground that the master erred as a matter of law in finding and holding that a carrier is only entitled, under the Constitution and the act to regulate commerce, to just compensation for the entire use of all its property, and that a particular rate need not in and of itself furnish just compensation for the particular service rendered; and further erred, as a matter of law, in holding that confiscation under the provisions of the Constitution can not be predicated upon a single rate unless the reduction in that rate so affects the general body of net returns as to reduce the net returns as a whole below what is just and reasonable, for the reason that under the provisions of the Constitution and the limitations of power upon the Interstate Commerce Commission, as contained in the act to regulate commerce, the commission is without power to establish any rate or rates for transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all the circumstances relating to that service is just and reasonable.

V.

They except to that finding and conclusion, appearing on page 44 of the printed copy of the report, reading as follows:

"The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost."

232 And to that finding and conclusion, appearing on page 49 of the printed copy of the report, reading as follows:

"There is not evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations."

for the reason that complainants have not conceded that the rates on lumber fixed by the orders of the commission involved herein were not confiscatory, and for the further reason that there is ample evidence in the record from which it clearly and persuasively appears that the rates fixed by the orders of the commission in controversy here are confiscatory. The evidence of the witness, James J. Hill, at pages 1267, 1276, 1278, 1280, 1288, 1294, and 1298 in the printed transcript of the record; the evidence of the witness, Howard Elliott, at pages 1372 to 1374, inclusive, therein; the evidence of the witness, J. G. Woodworth, at pages 3883 to 3891, inclusive, therein; the evidence of the witness, James A. Munroe, at page 306 and at pages 352, 364, 365; the evidence of the witness, J. G. Woodworth, at page 1475; the evidence of Dwight C. Morgan, at pages 800, 863; Woodworth Exhibit 1, page 1443; Woodworth Exhibit 2, page 1447; Maguire Exhibit 3, page 1485; R. B. Miller Exhibit 2, page 1500; Miller's statement, page 1512; Union Pacific statement, page 353; evidence of the witness, R. I. Farrington, page 1602 and following, and evidence of witness, James J. Hill, page 1280, clearly shows that the rates fixed by the orders of the commission complained of herein are confiscatory.

VI.

The complainants further except to the finding and conclusion of the master denying the prayer for an injunction against the orders of the commission disapproving the rates filed by the carriers in their tariffs of November 1, 1907, to points on and west of the so-

233 called Pembina-Port Arthur line and in lieu thereof requiring the restoration of the rates previously in effect to points on and west of said line for the reason in exception number V that the evidence conclusively shows that the rates established by the carriers in the tariffs of November 1, 1907, to points on and west of said Pembina-Port Arthur line were neither unjust nor unreasonable, and conclusively shows that the rates ordered restored by the orders herein complained of were and are unjust, unreasonable, and confiscatory.

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The complainants therefore pray that the report in the matters hereinbefore excepted to be modified and made to conform to the law and the proof contained in the record.

HALE HOLDEN,
F. C. DILLARD,
H. A. SCANDRETT, and
CHARLES DONNELLY,
Solicitors for Complainants.

Filed August 27th, 1910. Henry D. Lang, clerk.

234 Thereafter and on September 15th, 1910, the following record of hearing upon exceptions to master's report was entered of record in said cause, to wit:

235 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes. June term, A. D. 1910. September 15, 1910.

Thursday morning: Court opened pursuant to adjournment. Present: Hon. Walter H. Sanborn, Hon. Willis Van Devanter, Hon. William C. Hook, circuit judges; Henry D. Lang, clerk.

UNION PACIFIC RY. CO., OREGON SHORT LINE R. R. Co., Oregon R. R. & Navigation Co., Southern Pacific Co., Northern Pacific Ry. Co., Great Northern Ry. Co., Chicago, Burlington & Quincy R. R. Co., and Oregon & California R. R. Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 883. Equity.
NORTHERN PACIFIC RY. CO., GREAT NORTHERN Ry. Co., Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., Oregon Short Line R. R. Co., and Oregon R. R. & Navigation Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 884. Equity.
GREAT NORTHERN RY. CO., NORTHERN PACIFIC Ry. Co., Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., Oregon Short Line R. R. Co., Oregon R. R. & Navigation Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

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This day came the parties to these causes by their respective solicitors, Mr. Hale Holden appearing on behalf of the complainants and Messrs. Luther M. Walter, J. N. Teal, and W. A. Wimbish appearing on behalf of the defendant, and the said causes having been heretofore by order duly made and entered set down
236 for hearing at this time and place, upon the exceptions of the complainants and defendant to the special master in chancery's report herein, the same now coming on.

Mr. Hale Holden opens and argues the said exceptions on behalf of the complainants.

Mr. Luther M. Walter opens, states, and argues the exceptions on behalf of the defendant.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. Luther M. Walter resumes and concludes his argument upon said exceptions on behalf of the defendant.

Mr. W. A. Wimbish argues upon the said exceptions on behalf of the defendant.

Mr. J. N. Teal argues in conclusion upon said exceptions on behalf of the defendant.

Mr. Hale Holden argues in reply and conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties hereto upon said exceptions to the special master's report, the same are duly submitted to and by the court taken under advisement.

Ordered, That this court do now adjourn until to-morrow morning at ten o'clock.

A true record,

Attest:

HENRY D. LANG, *Clerk.*

237 Thereafter, and on October 1st, 1910, the following order, fixing the compensation of the special master, was filed and entered in said cause, to wit:

238 United States Circuit Court, District of Minnesota, Third Division.

Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railroad Company, Great Northern Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* Interstate Commerce Commission, defendant.	No. 883.
Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* Interstate Commerce Commission, defendant.	No. 884.
Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* Interstate Commerce Commission, defendant.	No. 885.

239 By orders of this court made one in each of the above entitled causes, on the 13th day of February, 1909, Frederick M. Dickson, of St. Paul, Minnesota, was appointed special master in chancery in each of said causes, and empowered and directed to take and report to the court the evidence therein; to examine the same; to make all necessary computations; to find and state the facts in said causes, and to report advisory conclusions of law and recommend a proper form of decree herein:

And the said master having heard said causes, the same having been tried before him together, and having, on the 22nd day of July, 1910, served upon the respective parties to said causes a preliminary report of his conclusions and recommendations therein, and having, on the 19th day of August, 1910, heard and considered the exceptions of the respective parties to said causes to said report and recom-

mendations, and having thereafter, on the 27th day of August, 1910, filed his final report of said causes and recommendations therein;

Now, upon consideration, it is ordered, That the compensation of said special master for his services in said three causes (including $200.00 expense sustained by him) be, and it is hereby, fixed and allowed at the sum of four thousand $4,000.00) dollars, to be distributed pro rata between said causes.

Dated this 28th day of September, 1910.

WALTER H. SANBORN, *Circuit Judge.*

(Endorsed:) Order fixing master's compensation. Filed Oct. 1, 1910. Henry D. Lang, clerk. (Entered, T. M., vol., 42, page 153–4.)

240 Thereafter and on the same day the following exceptions of defendant to master's report were filed in said cause, to wit:

241 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

Exceptions of defendant to master's final report.

Charles C. Houpt, United States attorney; Luther M. Walter, special assistant United States attorney.

J. N. Teal, W. A. Wimbish, of counsel.

Now comes defendant, Interstate Commerce Commission, by its solicitors, and excepts to the final report of the special master filed herein on the 27th day of August, 1910, upon each and every ground set out in the objections and exceptions of this defendant filed with the master on the 17th day of August, 1910, set out in Exhibit
242 A accompanying the printed report of the master at pages 73 and 96, both inclusive.

In further support of said exceptions so presented to and filed with the master, thos defendant respectfully submits the following:

(a) Referring to exception No. 3 (pp. 74, 75 of the master's report), the master should have found and declared that the 40-cent rate to St. Paul was established by the Great Northern Railway Company, upon its completion to the coast in 1893, for the purpose of securing traffic and because it was believed and declared by the officials of the said railway company that this rate was reasonable and just and would afford the carrier fair remuneration for the services rendered; and the fact that there was or probably would be an empty east-bound movement of cars was not considered or offered as a reason for making the rate. (Trans., pp. 1274–75.)

The master should have further found that the Northern Pacific Railway Company joined in this rate because it was forced to do so by competition, and not because of the existence of an east-bound empty car movement.

(b) Referring to exception No. 14 (p. 77 of the master's report), the master should have found and declared that while the rate per ten mile for the haul of lumber from coast points to Omaha, under the 50-cent rate, was less than the average rate per ten mile on all traffic of the complainant roads, it afforded full compensation for the service performed, and was not out of line with the rates upon other traffic, in view of the length of haul, the volume of the movement, and the character of the commodity.

(c) Referring to exception 15 (p. 77 of the master's report), the master should have found and declared that Omaha and St. Paul are not on a party as bases for the rates for the haul of lumber
243 from Pacific coast points; that many years ago the carriers established a differential of 20 cents a hundred pounds as between Omaha and St. Paul because of the greater market competition at St. Paul, which was then the center of a large lumber-producing region; that as this competition relaxed the differential was decreased, until under the tariffs of November 1, 1907, it was made 5 cents a hundred pounds; that the Interstate Commerce Commission in its report and order did not disturb, but recognized and retained this differential in the rates prescribed; and that the difference in market competition existing at St. Paul justified the carriers in fixing the differential of 5 cents under Omaha.

The defendant prays that the said exceptions be sustained by the court; that the findings and conclusions of the masters excepted to be reversed; and that the original and amended bills of the complainants in said causes be dismissed.

CHARLES C. HOUPT,
United States Attorney.
JOEL M. DICKEY,
Assistant United States Attorney.

(Endorsed:) Defendant's exceptions to master's report. Filed October 1st, 1910. Henry D. Lang, clerk.

244 Thereafter and on October 10th, 1910, the following decision overruling exceptions and directing decrees to be entered was filed in said cause, to wit:

245 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY; OREGON Short Line Railroad Co.; Oregon Railroad and Navigation Co.; Southern Pacific Co.; Northern Pacific Railway Co.; Great Northern Railway Co.; Chicago, Burlington & Quincy Railroad Co.; and Oregon and California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883. Equity.
NORTHERN PACIFIC RAILWAY CO.; GREAT NORTHern Railway Company; Chicago, Burlington & Quincy Railroad Co.; Union Pacific Railroad Co.; Oregon Short Line Railroad Co.; and Oregon Railroad and Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884. Equity.
GREAT NORTHERN RAILWAY CO.; NORTHERN PAcific Railway Co.; Chicago, Burlington & Quincy Railroad Co.; Union Pacific Railroad Co.; Oregon Short Line Railroad Co.; Oregon Railroad and Navigation Co.; and Southern Pacific Co., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885. Equity.

All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty cent rate on lumber to St. Paul

and other points east of the Pembina Line was arbitrary, so palpably unjust and unreasonable and so discriminatory that it was beyond the power of the commission, are overruled on the ground that this action of the commission was beyond its power or so paypably and gravely unjust and unreasonable as to be beyond the substance if not beyond the form of its power, and upon the authority of Interstate Commerce Com. vs. Ill. Cent. R. R. Co. (30 Sup. Ct. Te., 155); C., M. & St. P. Ry. Co. vs. Minnesota (134 U. S., 418–452–456–457);
246 Mo., Kansas Texas R. R. Co. et al., vs. I. C. C. (164 Fed., 645); F. H. Peavey & Co. vs. U. P. Ry. Co. (176 Fed., 409–418–422).

Let orders therefore be entered overruling the exceptions to the special master's report and let the proposed decrees be entered.

(Endorsed:) Decision overruling exceptions and directing decrees to be entered. Filed Oct. 10, 1910. Henry D. Lang, clerk.

Thereafter and on October 11th, 1910, the following order overruling exceptions to master's report was filed and entered in said cause, to wit:

247 United States Circuit Court for the District of Minnesota, Third Division.

Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, *vs.* Interstate Commerce Commission.	Equity. No. 884.

Whereas an order was duly entered herein on the 30th day of July, A. D. 1910, setting the exceptions of the complainants and defendant to the report of the special master in chancery, and the form of decree recommended and proposed by him, which said report and proposed decree were duly filed herein on the 27th day of August, A. D. 1910, down for hearing on the 15th day of September, A. D. 1910, and the same having been on that day heard, argued, and submitted to and by the court taken under advisement.

Now, after due consideration thereof, it is by the court ordered, adjudged, and decreed, That all of the exceptions of the complainants and defendant and of each of them be, and they hereby are, overruled. And it is further ordered, That the report of the special master in chancery as filed herein be, and the same hereby is, in all things approved and confirmed and that the decree recommended by the

said special master be, and the same hereby is, approved, and accordingly that the same be entered.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
U. S. Circuit Judges.

(Endorsed:) Order overruling exceptions to special master's report. Filed Oct. 11, 1910. Henry D. Lang, clerk.

248 Thereafter and on October 13th, 1910, the following decree was filed and entered in said cause, to wit:

249 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in the two proceedings brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1329; and Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1335, dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in that proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 27, 1908, and as further amended September 1, 1908; and the order of the defendant in that proceeding brought before it entitled Western Oregon Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in that proceeding brought before it entitled Potlatch Lumber Company et al.
250 v. Northern Pacific Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, in so far as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than

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those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points each of the line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorhead and Breckenridge, Minnesota; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Missouri; and thence to Port Arthur, Texas, along the Kansas City Southern Railway *vs*, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said lines.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
U. S. Circuit Judges.

(Endorsed:) Decree. Filed October 13th, 1910. Henry D. Lang, clerk.

Thereafter and on October 17th, 1910, the following stipulation for taxation of costs was filed and entered in said cause, to wit:

251 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

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Stipulation.

It is stipulated that the following items of disbursements made by the complainants in the above-entitled causes were disbursements necessarily made therein, and that they may be taxed as costs in favor of said complainants, the amounts named below to be apportioned pro rata between said causes, or, in other words, one-third to each cause:

252	1908.		
	Dec. 17.	Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for serving chancery subpœna	$3.00
	1909.		
	Nov. 6.	Paid Robt. S. Taylor, Saint Paul, for record of testimony and proceedings	1,413.00
	Jan. 18.	Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for additional deposit	10.00
	1910.		
	April 15.	Paid Gunthrop-Warren Printing Company for printing record	2,948.00
	Mar. 1.	Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for additional deposit	30.00
	Aug. 6.	Paid Review Publishing Company, Saint Paul, for printing master's report	50.25
	Sept. 3.	Paid Gunthrop-Warren Printing Company for reprint of master's report, with exceptions and rulings thereon	94.50
	Oct. 7.	Paid Frederick N. Dickson, special master, compensation for his services as per agreement of parties and order of court	4,000.00
		Total	8,548.75
		To fees of H. Lee, crier, Chicago, 8 days, at $2.50 per day, as per stipulation filed Mar. 11, 1910	20.00
			8,568.76

F. C. Dillard,
Hale Holden,
Chas. Donnelly,
Solicitors for Complainants.
Luther M. Walter,
Solicitor for Defendant.

To amount brought forward	$8,568.75
Deduct therefrom deposits for costs	40.00
	8,628.75
One-third thereof under the stipulation apportioned to this case	2,842.92
To clerk's fees in this cause	27.50
To making chancery final record	101.55
	2,971.97

Cost taxed at $2,971.97, this 17th day of October, A. D. 1910.
Henry D. Lang, *Clerk.*

(Endorsed:) Stipulation for taxation of costs. Filed October 17th, 1910. Henry D. Lang, clerk.

253 Thereafter and on the same day the following judgment for costs were entered in said cause, to wit:

254 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes. June term, A. D. 1910. October 17th, 1910.

Monday morning. Court opened pursuant to adjournment.
Present: Hon. Walter H. Sanborn, circuit judge; Hon Charles A. Willard, judge; Henry D. Lang, clerk.

Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, *vs.* Interstate Commerce Commission.	Equity. No. 884.

In accordance with the final decree entered herein on the 13th day of October, 1910, and the stipulation of the solicitors for the respective parties hereto this day filed herein, it is by the court ordered, adjudged, and decreed, that the Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, the complainants herein, do have and recover of and from the Interstate Commerce Commission, the defendant herein, their costs and disbursements in this action this day taxed and allowed at the sum of two thousand nine hundred seventy-one dollars and ninety-seven cents ($2,971.97), and that they have execution therefrom.

A true record.
Attest: Henry D. Lang, *Clerk*.

255 Thereafter and on October 17th, 1910, the following appeal papers were filed and entered of record in said cause, to wit:
Assignment of errors and prayer for reversal.
Petition for appeal.
Order allowing appeal.
Præcipe for return to U. S. Supreme Court.
Original citation and proof of service thereof.

256 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 884.

Assignment of errors.

Now comes the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the United States attorney, and charges that in the order and decree rendered by said circuit court for said district in the above entitled cause, on the tenth day of October, 1910, wherein and whereby said court suspended the order of the Interstate Commerce Commission, as therein shown, and restrained and enjoined the enforcement of the same, and in the record and proceedings therein there is manifest error to its injury, in this, to wit:

1. Said circuit court erred in not dismissing the bill and amended bill of complaint for want of equity.

2. Said circuit court erred in not dismissing complainants' bill and amended bill for want of jurisdiction.

3. Said circuit court erred in holding that the said order of the commission was erroneous and unlawful and beyond the power of the commission to make.

4. Said circuit court erred in ordering that said order of the commission be suspended, set aside, and held for naught and its attorneys, agents, and employes be restrained and enjoined from enforcing the same.

5. Said circuit court erred in suspending, annulling, and holding void said orders of the said commission.

Wherefore the Interstate Commerce Commission prays that the decree of said circuit court rendered on the tenth day of Octo-
257 ber, 1910, be reversed, and that said circuit court be ordered to enter a decree dismissing the amended petition or bill of complaint in the above entitled cause by said complaint against said Interstate Commerce Commission.

CHAS. O. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant to the United States Attorney.

(Endorsed:) Assignment of error and prayer for reversal. Filed October 17, 1910. Henry D. Lang, clerk.

258 In the Circuit Court of United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, defendant. } No. 884.

Petition for appeal.

The Interstate Commerce Commission, by Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, being thereunto duly authorized, represents that in the decree or order of said Circuit Court in the above stated case, rendered on the tenth day of October, 1910, there is manifest error to its injury, and therefore prays for an order granting appeal from said decree to the Supreme Court of the United States.

CHAS. C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Asst. to the United States Attorney.

(Endorsed:) Petition for appeal. Filed October 17, 1910. Henry D. Lang, clerk.

259 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, defendant. } No. 884.

Order allowing appeal.

In this cause the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the tenth day of October, 1910, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of $2,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 11th day of November, 1910.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order allowing appeal. Filed October 17th, 1910. Henry D. Lang, clerk.

260 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.

To the clerk of the above-named court:

Please make a return upon the appeal to the United States Supreme Court and include therein all the files and records in this cause.

Dated St. Paul, Minnesota. Charles C. Houpt.

CHAS. C. HOUPT, *U. S. Atty.*,
LUTHER M. WALTER, *Atty.*,
Complainants' Solicitors.

(Endorsed:) Præcipe for return. Filed October 17, 1910. Henry D. Lang, clerk.

261 United States of America, Circuit Court, Eighth Circuit.

Citation.

United States of America to Northern Pacific Railway Company et al, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the Capitol, in the city of Washington, D. C., thirty days from and after the date this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. Circuit Court for the district of Minnesota, third division, wherein the Interstate Commerce Commission is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said petition mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said court, this 17th day of October, A. D. 1910.

WALTER H. SANBORN,
Judge of Said Court.

Due service of the foregoing citation by copy at St. Paul, Minnesota, is hereby admitted this 17th day of October, A. D. 1910.

F. C. DILLARD,
HALE HALDEN,
CHARLES DONNELLY,
Solicitors for Appellees.

(Indorsed:) Entered, 884 Eq., No. 884, equity. United States Circuit Court, District of Minnesota, 3d division. Northern Pacific Railway Co. vs. The Interstate Commerce Commission, defendant. Citation. Filed Oct. 17, 1910. Henry D. Lang, clerk.

263 And thereafter and on the same day the following stipulation as to record on appeal was filed in said cause, to wit:

264 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainant, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 884. Equity.
GREAT NORTHERN RAILWAY COMPANY, complainant, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

It is stipulated and agreed by and between the parties hereto that the clerk of this court, in preparing the records for transmission to the Supreme Court of the United States, shall not include the record in each of these two cases, it being in each case a duplicate of that being set forward in the case of the Union Pacific Railway Company et al. versus the Interstate Commerce Commission, No. 883. The Supreme Court in passing upon the appeal in each of the said cases may use the record in number 883 as the record in all three of said cases.

F. C. DILLARD,
Solicitor for Complainant.
HALE HOLDEN,
Solicitor for Complainant.
CHARLES DONNELLY,
Solicitor for Complainant.
CHARLES C. HOUPT,
Solicitor for Defendant.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation as to record upon appeal. Filed October 17, 1910. Henry D. Lang, clerk.

265 United States of America, Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable the Supreme Court of the United States, that the foregoing, consisting of 265 pages, numbered consecutively from 1 to 265, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other pro-

ceedings in said cause except the original bill of complaint and the exhibits filed by the complainants, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 28th day of October, A. D. 1910.

[SEAL.]

HENRY D. LANG, *Clerk.*
By LOUISE B. TROTT, *Deputy.*

Office of the clerk, Supreme Court U. S. Received Oct. 31, 1910.

(Indorsement on cover:) File No. 22424, Minnesota, C. C. U. S. Term No. 452. The Interstate Commerce Commission, appellant, vs. Northern Pacific Railway Company et al. Filed November 30th, 1910. File No. 22424.

○

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 453.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

GREAT NORTHERN RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 30, 1914.

(22425)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 453.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

GREAT NORTHERN RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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1 United States of America. In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendants.	No. 884. Equity.

Pleas before the honorable the judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division, of the June, A. D. 1910, term of said court, held in said district in the year of our Lord one thousand nine hundred and ten (1910).

District of Minnesota:

Be it remembered that on the 1st day of October, A. D. 1908, came the complainants by their solicitors and counsel and filed in the clerk's office of said court their bill of complaint, which is omitted from this return in view of the subsequent filing of an amended bill of complaint.

And thereupon, upon application of said solicitors, a writ of subpœna was duly issued out of said court and under the seal thereof duly vested, and in the words and figures following, to wit:

2 Circuit Court of the United States, District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., *vs.* INTERSTATE COMMERCE COMMISSION.	Præcipe for chancery subpœna.

To the clerk of the above named court:

Please issue chancery subpœna directed to the above named defendant, returnable November Rules, 1908.

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Solicitors for Complnts.

3 United States Circuit Court, District of Minnesota, Third Division.

Chancery Common Rule and Order Book.

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* INTERSTATE COMMERCE COMMISSION.	Equity No. 885.

1910, Oct. 1st.

The complainants herein having filed a bill in equity in this cause, on application of F. C. Dillard, James B. Kerr, and Hale Holden,

solicitors for said complainants, it is hereby ordered that a chancery subpœna issue as therein prayed.

(Entered C. R. "C," page 8.)

4 [Original.]

United States of America, District of Minnesota, Third Division.

The President of the United States of America to the Interstate Commerce Commission, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the Circuit Court of the United States for the District of Minnesota on the first Monday of November next, at the city of St. Paul, then and there to answer the bill of complaint of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, citizens of the States of Wisconsin, Minnesota, Utah, Illinois, and Oregon, filed against you on the 1st day of October, A. D. 1908; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 1st day of October, 1908.

Issued at my office in the city of St. Paul under the seal of said Circuit Court the day and year last aforesaid.

[SEAL OF COURT.] HENRY D. LANG, *Clerk.*

Memorandum: The above-named defendant to enter its appearance in this suit in the clerk's office aforesaid on or before the day at which this writ is returnable, otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk.*

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Complainants' Solicitors.

(Endorsed:) Chancery subpœna, returnable November Rules, 1908. Served copy of within writ on within-named defendant by service on E. A. Moseley, its secretary. Oct. 3, 1908. Aulick Palmern, U. S. marshal, Dist. of Columbia. Filed October 8th, 1908. Henry D. Lang, clerk.

5 Thereafter and on the 12th day of October the following appearance of Luther M. Water for defendant and order of appearance were filed and entered in said cause, to wit:

6 Circuit Court of the United States, District of Minnesota, Third Division.

G. N. RY. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 885. Appearance.

The clerk will enter my appearance for the defendant in above entitled case.

LUTHER M. WALTER.

(Endorsed:) Appearance of Luther M. Walter, for deft. Entd. C. R. "C," page 142. Filed October 12th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

7 United States Circuit Court, District of Minnesota, Third Division.

Chancery Rule and Order Book.

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* INTERSTATE COMMERCE COMMISSION. | Oct. 12. No. 885. Equity.

This day comes the defendant by Luther M. Walter, solicitor, on whose motion it is hereby ordered that the appearance of said defendant be, and the same is hereby, entered.

(Entered C. R. "C," page 140.)

Thereafter and on the 16th day of October the following certificate of the Attorney General was filed in said cause, to wit:

8 In the Circuit Court of the United States for the District of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION.

To the clerk of said court:

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by the Great Northern Railway Company et al. against the Interstate Commerce Commission under the act of Congress entitled "An act to regulate commerce," as amended by the act of June 29, 1906, and that said suit is, in my opinion, a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted," approved February 11, 1903; and in further compliance with the provisions contained in section 16 of the "Act to regulate commerce," approved June 29, 1906, you will file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Eighth Circuit, to the end that said case shall be given precedence over other cases in said court, and will be assigned for hearing at the

earliest practicable date before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney General.

WASHINGTON, D. C., *October 13, 1908.*

9 (Endorsed:) Certificate of the Attorney General under the acts of February 11th, 1903, and June 29th, 1906. Filed October 16th, 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following certificate of Henry D. Lang, clerk, was filed in said cause, to wit:

10 United States Circuit Court, District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that on the 16th day of October, A. D. 1908, I personally handed to and left with the Honorable Walter H. Sanborn, one of the United States circuit judges for the Eighth Circuit, at St. Paul, Minnesota, a duly certified copy of the certificate of the Attorney General, under the acts of February 11th, 1903, and June 29th, 1905, this day filed in the above entitled cause, and that on the same day I mailed a certified copy to the Honorable Willis Van Devanter, by enclosing a copy thereof in an envelope addressed to him at Cheyenne, Wyoming, and depositing the same in the post office at St. Paul, Minnesota, and that on the same day I also mailed a duly certified copy of said certificate to the Honorable Elmer B. Adams, by enclosing the same in an envelope addressed to him at St. Louis, Missouri, and depositing the same in the post office at St. Paul, Minnesota, and that on the same day I also mailed a duly certified copy of said certificate to the Honorable William C. Hook, by enclosing the same in an envelope addressed to him at Leavenworth, Kansas, and depositeding the same in the post office at said St. Paul, Minnesota.

In witness whereof I have hereunto set my hand and official seal this 16th day of October, A. D. 1908.

HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of Henry D. Lang, clerk, of delivery of Attorney General's certificate to U. S. circuit judges. Filed October 16th, 1908. Henry D. Lang, clerk.

11 Thereafter and on October 16th, 22nd, and 27th the following receipts of the circuit judges for Attorney General's certificate were filed in said cause, to wit:

12 United States Circuit Court, District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

Received of Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, a certified copy of the certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29th, 1906, filed in the above entitled cause October 16th, 1908.

Dated October 16th, 1908.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Receipt of Hon. Walter H. Sanborn for Attorney General's certificate. Filed October 16th, 1908. Henry D. Lang, clerk.

13 United States Circuit Court of Appeals, Eighth Circuit.

(Hon. David J. Brewer, circuit justice, Washington, D. C. Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. Willis Van Devanter, Cheyenne, Wyo.; Hon. William C. Hook, Leavenworth, Kan.; Hon. Elmer B. Adams, St. Louis, Mo.; circuit judges.)

ST. LOUIS, MO., *Oct. 20, 1908.*

HENRY D. LANG, ESQ.,
Clerk United States Circuit Court,
St. Paul, Minnesota.

DEAR SIR: I beg to acknowledge receipt of your letter of October 16th, with enclosures. I see no occasion for accepting service in the manner suggested by some of your enclosures as if the proceeding were a suit against the judges individually.

Very respectfully, yours, ELMER B. ADAMS.

(Endorsed:) Receipt of Judge Elmer B. Adams for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

14 ST. LOUIS, MISSOURI, *October 19 1908.*

Mr. HENRY D. LANG, *Clerk,*
St. Paul, Minnesota.

DEAR SIR: I am in receipt of yours of the 16th inst. enclosing copies of the certificates of the Attorney General in the three cases,

Union Pacific Railroad Co., Northern Pacific Railway Co., and Great Northern Railway Co., against the Interstate Commerce Commission, Nos. 883, 884, and 885, in the Circuit Court for the Minnesota District.

Very truly, WILLIAM C. HOOK.

(Endorsed:) Receipt of Judge Wm. C. Hook for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

15 ST. PAUL, *October 16, 1908.*

Hon. WILLIS VAN DEVANTER,
U. S. Circuit Judge, Cheyenne, Wyo.

MY DEAR JUDGE: I hand you herewith a certified copy of the certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29, 1906, filed to-day in each of the cases of 883 Equity, Union Pacific Rd. Co. et al. vs. Interstate Commerce Commission; 884 Equity, Northern Pacific Railway Co. et al. vs. Interstate Commerce Commissin, and 885 Equity, Great Northern Railway Co. et al. vs. Interstate Commerce Commission, together with a receipt for each, which kindly sign and return to me.

Yours, very truly, HENRY D. LANG, *Clerk.*

Dictated.

ST. PAUL, *Oct. 28, 1908.*

The above enclosures were received by me to-day, the same having been forwarded from Cheyenne.

WILLIS VAN DEVANTER.

(Endorsed:) Receipt of Judge Van Devanter for certificate of Attorney General. Filed October 27th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

16 Thereafter and on October 20th, 1908, the following amended bill of complaint was filed in said cause, to wit:

17 In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, OREGON RAILROAD AND NAVIGATION COMPANY, AND SOUTHERN PACIFIC COMPANY, complainants, *v.* THE INTERSTATE COMMERCE COMMISSION, DEFENDANT.	In Equity. No. 885.

Amended bill of complaint.

To the honorable judges of the Circuit Court of the United States within and for the District of Minnesota:

Great Northern Railway Company, a corporation organized under the laws of the State of Minnesota; Northern Pacific Railway Com-

pany, a corporation organized under the laws of the State of Wisconsin; Chicago, Burlington and Quincy Railroad Com-
18 pany, a corporation organized under the laws of the State of Illinois; Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Railroad and Navigation Company, a corporation organized under the laws of the State of Oregon; and Southern Pacific Company, a corporation organized under the laws of the State of Kentucky, bring this, their amended bill, against the Interstate Commerce Commission, established and existing under and by virtue of an act of the Congress of the United States.

And thereupon your orators complain and say:

I. That the Great Northern Railway Company is a corporation duly organized and existing under the laws of the State of Minnesota; that the Northern Pacific Railway Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin; that the Chicago, Burlington and Quincy Railroad Company is a corporation duly organized and existing under the laws of the State of Illinois; that the Union Pacific Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Short Line Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Railroad and Navigation Company is a corporation duly organized and existing under the laws of the State of Oregon; and that the Southern Pacific Company is a corporation duly organized and existing under the laws of the State of Kentucky; that the defendant, the Interstate Commerce Commission, has
19 been created and established, and during all the times herein mentioned has existed, under and by virtue of an act of the Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof.

Your orators further show that the Great Northern Railway Company has its principal operating office in the city of St. Paul, in the District of Minnesota, third division thereof.

II. Your orators further show that the Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company are each common carriers, engaged in the transportation of property by railroad, by continuous carriage or shipment, from points in the States of Washington, Oregon, Montana, and Idaho to points in the States of Montana, North Dakota, Minnesota, Wisconsin, Illinois, Iowa, Missouri, Kansas, Nebraska, Utah, and Colorado, and have been so engaged for many years past, and a large proportion of the property so transported by your orators is, and has been, lumber, shingles, and other forest products produced at points in the States of Washington, Oregon, Montana, and Idaho. That for the purpose of transporting

the lumber, shingles, and other forest products so produced in the States of Washington, Oregon, Montana, and Idaho to points of consumption in the States above named, your orators have established and maintained through routes and joint rates over their lines
20 and the lines of connecting railways from said points in the States of Washington, Oregon, Montana, and Idaho to destinations in said other States.

III. The rates for the transportation of lumber, shingles, and forest products from points in the States of Washington, Oregon, Montana, and Idaho over the lines of your orators' railways to points thereon in the States above mentioned, and to points in said States and other States over lines of connecting railways, which rates were in effect on October 31, 1907, and which had been in effect for a long time before that date, were prescribed in certain tariffs duly filed, published, and posted under the provisions of the act entitled "An act to regulate commerce." These tariffs are known and described as follows: S. R. No. 662, I. C. C. No. 564; G. N. G. F. O. 9838, I. C. C. No. A–1101; G. N. G. F. O. 13051, I. C. C. No. A–1427; G. N. G. F. O. 17526, I. C. C. No. A–2231; G. N. F. O. 18025, I. C. C. No. A–2427; G. N. G. F. O. 18837, I. C. C. No. A–2661; Northern Pacific No. 23275, I. C. C. No. A–3095, and Northern Pacific No. 20285, I. C. C. No. B–479, and are too voluminous to be set out in this amended bill of complaint, but true copies thereof have been filed in cause No. 884, entitled "Northern Pacific Railway Company and others v. The Interstate Commerce Commission," heretofore filed and now pending in this court, and reference thereto for convenience is hereby prayed as if the same were made a part of this amended bill of complaint and filed herewith, the said tariffs being marked, respectively, Exhibits 1 to 8, inclusive.

21 IV. That more than thirty days previous to November 1, 1907, your orators, together with a large number of other carriers, filed, published, and posted, in accordance with the provisions of that certain act of Congress, entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof, a certain tariff known as "Transcontinental Freight Bureau East-bound Special Tariff No. S. R. 963, I. C. C. No. 850," with supplements 1 and 2, which became effective November 1, 1907, wherein rates were prescribed for the transportation of lumber, shingles, and forest products from points in the States of Washington, Oregon, Montana, and Idaho to points in North Dakota, South Dakota, Montana, Minnesota, Wisconsin, Iowa, Illinois, Missouri, Nebraska, Arkansas, Louisiana, Texas, Oklahoma, New Mexico, Colorado, Kansas, Utah, and Wyoming, and at or about the same time your orator, Great Northern Railway Company, filed, published, and posted, under the provisions of said act of Congress, a certain local and joint tariff known as "Great Northern I. C. C. No. A-2667," which prescribed the rates for the transportation of lumber, shingles, and forest products from points in the States of Washington, Oregon, Montana, and Idaho to points in Oregon, Washington, Idaho, Mon-

tana, Alberta, and British Columbia, which said tariff, and the rates therein prescribed, became effective on November 1, 1907, and at or about the same time your orator, Northern Pacific Railway Company, filed, published, and posted a certain local and joint tariff pre-
22 scribing rates for the transportation of lumber, shingles, and forest products from points in the States of Washington, Oregon, Montana, and Idaho to points in Idaho, Montana, and North Dakota, which rates became effective on November 2, 1907, said tariff being I. C. C. No. A-3432.

That said tariffs above described are too voluminous to be set out in this amended bill of complaint; that true copies thereof have been filed in said Cause No. 884, entitled "Northern Pacific Railway Company et al. against The Interstate Commerce Commission," heretofore referred to, and reference thereto is hereby prayed, as if the same were made a part of this amended bill of complaint, the said tariff I. C. C. No. 850 being marked "Exhibit 9," the said tariff I. C. C. No. A-2667 being marked "Exhibit 10," and the said tariff I. C. C. No. A-3432 being marked "Exhibit 11."

That in and by said tariffs so filed, published, and posted the articles or commodities therein described were designated as groups A, B, C, and D, and by the terms thereof group A comprised shingles, group B comprised lumber, poles, piling, and timbers of cedar of single car lengths, and certain articles manufactured from cedar, group C comprised lumber, poles, piling, and timbers of fir, hemlock, larch, pine, and spruce of single car lengths, and certain articles manufactured therefrom, and group D comprised long timbers, poles, piling, or lumber requiring two or more cars for transportation.

V. That the rates named in said tariffs so filed, published, and posted thereupon became, were, and are the only lawful rates
23 for the transportation of the various commodities comprised within said four groups, from each and all of the points in the States of Washington, Oregon, Montana, and Idaho named in said tariffs to each and all of the points of destination in said other States named in said tariffs, and said rates, and each and all of them, were, on November 1, 1907, ever since have been and now are low for the service rendered and by comparison with other rates, and as such neither unreasonable nor unjust, and, as your orators verily believe, will continue so to be for the period of two years from October 15, 1908.

VI. That as soon as the said rates prescribed by the tariffs above mentioned became effective, a certain proceeding was commenced before the Interstate Commerce Commission entitled "Potlatch Lumber Company and others vs. Northern Pacific Railway Company and others," being cause No. 1348 before said Commission. In said cause No. 1348 the Potlatch Lumber Company and others complained against your orators and other carriers parties to said tariffs, and the complainants in said cause alleged that they were engaged in the manufacture and interstate shipment and sale of lumber, shingles, and other forest products from points within to points without the States of

Washington, Oregon, and Idaho, the rates on which were fixed by said tariffs, and alleged that the rates fixed therein for the transportation of such commodities were unreasonable and unjust. Upon the filing of the complaint in said cause, the defendant, Interstate Commerce Commission, required your orators and the other carriers named as defendants in said proceeding to answer the complaint of said complainants, and thereupon an answer was
24 duly filed by your orators, and upon the issues raised therein evidence was produced before the said Interstate Commerce Commission by such complainants and by your orators, and the matters in difference in said cause were submitted to the commission on April 14, 1908.

VII. Thereafter, and on June 2, 1908, the defendant, Interstate Commerce Commission, entered an order in said cause No. 1348, which order was in words and figures as follows:

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1348.

Potlatch Lumber Company; St. Joe Lumber Company; B. R. Lewis Lumber Company; McGoldrick Lumber Company; Lamb-Davis Lumber Company; Fidelity Lumber Company; Washington Mill Company; Orrin S. Good; National Lumber Company; Cascade Lumber Company; Springston Lumber Company; Wm. Musser Lumber & Manufacturing Company; Phoenix
25 Lumber Company; Standard Lumber Company; Karamin Lumber Company; E. A. Humphrey and J. R. Humphrey, partners doing business under the name of the Elkhorn Saw Mills; Burkeye Lumber Company; Lindsey Brothers Company; W. H. Gerhart-Bradrick Lumber Company, a copartnership composed of W. H. Gerhart and A. V. Bradrick; S. H. & L. Lumber Company, a copartnership composed of G. W. Shaw, J. J. Herlihy, and A. W. Lammert; Idaho Pole Company, a copartnership composed of W. L. Beckwith and John H. Fowler; Chewelah Mill Company; Reeves-Farrell Lumber Company; Post Falls Lumber & Manufacturing Company; Laclede Lumber Company; Bonners Ferry Lumber Company; Dehlbohm Lumber Company; Humbird Lumber Company; Dover Lumber Company; Sand Point Lumber & Pole Company; Barber Lumber Company; Overland Lumber Company; Pan-Handle Lumber Company, Limited; George Palmer Lumber Company; Grande Ronde Lumber Company; Stoddard Brothers Company; Schockley & McMurren Lumber

Company; Goodnough Mercantile & Stock Company; Summerville Lumber Company; Wisconsin-Oregon Lumber Company; and Empire Lumber Company.

v.

Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Spokane Falls & Northern Railway Company; Columbia & Red Mountain Railway Company; Kootenai Valley Railway Company; Red Mountain Railway Company; Southern Pacific Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee &
26 St. Paul Railway Company; Canadian Pacific Railway Company; Spokane-International Railway Company; Coeur d'Alene & Spokane Railway Company, Limited; Spokane & Inland Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Idaho & Washington Northern Railroad Company; and Chicago, Milwaukee & St. Paul Railway Company of Washington, defendants; Oregon & Washington Lumber Manufacturers' Association, Intervener.

This case being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having on the date hereof made and filed a report containing its conclusions thereon:

It is ordered that said defendants, except the Chicago, Milwaukee and St. Paul Railway Company of Washington, are hereby notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present relation of rates on interstate shipments of lumber, shingles, and other forest products from points of origin in Washington, Oregon, Idaho, and Montana, to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., and case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al.

It is further ordered that said defendants and each of them, except the Chicago, Milwaukee & St. Paul Railway Company of Washington, be, and they are hereby, notified and required to establish and
put in force on or before the said 15th day of August, 1908,
27 and maintain in force thereafter during a period of not less than two years rates on said interstate shipments of lumber, shingles, and other forest products in accordance with the following differentials:

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane rates" group to points

on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak.; Moo'head and Breckenridge, Minn.; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Mo., and thence to Port Arthur, Texas, along the Kansas City Southern Railway, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the rates prescribed by the commission in cases No. 1327, Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. et al.; No. 1329, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al.; and No. 1335, Southwest Washington Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et al.; from the "coast rates" group, by differentials beginning at not less than 2 cents per 100 pounds and graded up westwardly (a) to a differential of not less than 6 cents per 100 pounds at Buford, N. Dak., on the line of the Great Northern Railway; (b) to a differential of not less than 6 cents per 100 pounds at Medora, N. Dak., on the line of the Northern Pacific Railway; (c) to a differential of not less than 6 cents per 100 pounds at Edgemont, S. Dak., on the line of the Chicago, Burlington & Quincy Railroad; (d) to a differential of not less than 6 cents per 100 pounds at Cheyenne, Wyo., on the line of the Union Pacific Railroad; (e) and to a differential of not less than 6 cents per 100 pounds at Denver, Colo., on the line of the Union Pacific Railroad.

Rates from the present "Spokane rates" group and from the present "Montana-Oregon" rates group to points on the west of said north and south line, Pembina-Port Arthur, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be
28 less than the "coast rates," as prescribed in the cases specified, by differentials beginning at not less than 3 cents per 100 pounds and graded up westwardly therefrom to a differential of not less than 7 cents per 100 pounds at Buford, N. Dak.; Medora, N. Dak.; Edgemont, S. Dak.; Cheyenne, Wyo.; and Denver, Colo., as described in the preceding paragraph.

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane rates" groups to points east of said line, Pembina-Port Arthur, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "coast rates," as prescribed in the cases specified, by a differential of not less than 2 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi River crossings.

Rates from the said "Spokane rates" group and the "Montana-Oregon" rates group, as those groups now exist, to points east of said line, excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "coast

rates," as prescribed in the cases specified, by a differential of not less than 3 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi River crossings.

And it is further ordered that as to the Chicago, Milwaukee & St. Paul Railway Company of Washington the complaint in this proceeding be, and it is hereby, dismissed.

VIII. And your orators further show that in said cause numbered 1348, wherein the Potlatch Lumber Company et al. are complainants and your orators are defendants, the said defendant, Inter-
29 state Commerce Commission, on July 27, 1908, by order duly entered, changed and extended the effective date of said order from August 15 to October 15, 1908.

IX. Your orators further show that the orders in cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and in cause No. 1331, entitled "Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al.," and in cause No. 1327, entitled "Oregon and Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al.," and in cause No. 1329, entitled "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and in cause No. 1335, entitled "Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al.," are as follows, to wit:

30 Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1054.

Pacific Coast Lumber Manufacturers' Association; Southwestern Washington Lumber Manufacturers' Association, and Shingle Mills Bureau

vs.

Northern Pacific Railway Company; Great Northern Railway Company; Northern Pacific Terminal Company of Oregon; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Oregon & California Railroad Company; Southern Pacific Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Colorado Midland Railway Company; Colorado & Southern Railway Company; Chicago, Burlington & Quincy Railroad Company; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock

Island & Pacific Railway Company; Missouri Pacific Railway Company; Leavenworth, Kansas & Western Railway Com-
31 pany; St. Joseph & Grand Island Railway Company; Kansas City Northwestern Railway Company, and Chicago & Northwestern Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered that the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, and the Union Pacific Railroad Company, be, and they are hereby, notified and required to establish, on or before the 15th day of August, 1908, between their respective lines of transportation, and maintain in operation for a period of not less than two years from said 15th day of August, through routes for the transportation of fir lumber, cedar lumber, spruce lumber, and shingles, from points on the lines of the Northern Pacific Railway Company in Washington north of Portland, Ore., through said Portland to Ogden and Salt Lake City, Utah, and common points in Utah; and also are required to establish and put in force on or before the said 15th day of August, and for a period of at least two years thereafter maintain a joint through rate not exceeding 40 cents per 100 pounds in carloads for the transportation of fir lumber and spruce lumber between said points, and a rate not exceeding 50 cents per 100 pounds in carloads for the transportation of cedar lumber and shingles between said points; and the said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain the notation
32 that it is issued under the authority hereby granted, and must refer to the title and number of this case.

It is further ordered that as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland over the lines of the Northern Pacific Railway Company and the Great Northern Railway Company and the Union Pacific system to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908:

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION; WILLAMETTE VALLEY LUMBER COMPANY; FALLS CITY LUMBER COMPANY; CURTISS LUMBER COMPANY; CHARLES K. SPALDING LOGGING COMPANY; BOOTH-KELLY LUMBER COMPANY; J. H. CHAMBERS; H. M. PARVIN; and CRUZAN BROTHERS, complainants; and INMAN-POULSEN LUMBER COMPANY; OREGON & WASHINGTON LUMBER COMPANY; EAST SIDE MILL & LUMBER COMPANY; STANDARD BOX AND LUMBER COMPANY; JONES LUMBER COMPANY; and ST. JOHNS LUMBER COMPANY, interveners,

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v.

SOUTHERN PACIFIC COMPANY AND OREGON & CALIFORNIA RAILROAD COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered that the defendants, the Southern Pacific Company and the Oregon & California Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough, green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the State of Oregon, and upon the west bank thereof south of Corvallis, Oregon, and upon the west bank of said river north of said Corvallis, to San Francisco, Cal., and bay points.

It is further ordered that said defendants be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough, green fir lumber and lath in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River and upon the west bank thereof south of said Corvallis to San Francisco, Cal., and bay points; and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of said Corvallis to said San Francisco and bay points, not including in either rate Portland, Oregon, as a point of origin.

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And it is further ordered that said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of com-

plying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1327.

OREGON & WASHINGTON LUMBER MAN'FACTURERS' ASSOCIATION; Eastern & Western Lumber Company; Curtiss Lumber Company; Clark & Wilson Lumber Company; Portland Lumber Company; Peninsular Lumber Company; Tongue Point Lumber Company; Booth-Kelly Lumber Company; North Pacific Lumber Company; Bridal Veil Lumbering Company; and Stanley Smith Lumber Company

35 *v.*

UNION PACIFIC RAILROAD COMPANY; OREGON SHORT LINE RAILROAD Company; Oregon Railroad & Navigation Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Astoria & Columbia River Railroad Company; Oregon & California Railroad Company, and Corvallis & Eastern Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon, to which report reference is hereby made:

It is ordered that said defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Astoria & Columbia River Railroad Company, Oregon & California Railroad Company, and Corvallis & Eastern Railroad Company, and each of them, be, and they are hereby, notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present rates on interstate shipments of lumber, shingles, and other forest products, from points of origin in Oregon, Washington, Idaho, Montana, and British Columbia to points in various States and Territories east and

southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturer's Asso. et al. *v.* Northern Pacific Ry. Co.
36 et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. *v.* Southern Pacific Co. et al., decided June 2, 1908.

It is further ordered that said defendants, and each of them, be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, rates on said interstate shipments of lumber, shingles, and other forest products from said points of origin to said points of destination which shall in no instance exceed the rates on like shipments between the same points which had been duly filed with the commission as required by law, and which were in effect immediately prior to November 1, 1907, subject to present minimum weight regulations and to the following limitations:

The rates on said lumber, shingles, and other forest products from said points of origin to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, also including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding those points to which rates are prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. *v.* Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. *v.* Southern Pacific Co. et al., decided June 2, 1908, which were in effect immediately prior to November 1, 1907, shall be restored, except that the differentials prescribed in case No. 1348, Potlatch Lumber Co. et al. *v.* Northern Pacific Ry. Co. et al., decided June 2, 1908, shall be observed; the rates which were in effect immediately prior to November 1, 1907, from said points of origin to points east of the line mentioned, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux
37 City, Iowa, and Kansas City, Mo., may be increased, in no case exceeding 5 cents per 100 pounds, and subject to the differentials prescribed in said case No. 1348.

This case will be held open for such supplemental proceedings as it may be necessary for interested parties to institute in respect to reparation.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1329.

PACIFIC COAST LUMBER MANUFACTURERS' ASSOCIATION; ST. PAUL & Tacoma Lumber Company; Atlas Lumber & Shingle Company; Page Lumber Company; Day Lumber Company; White River Lumber Company; Three Lakes Lumber Company; Wallace Lumber & Manufacturing Company; Grays Harbor Commercial Company; Tacoma Mill Company; Northwestern Lumber Company; Melrose Cedar Shingle Company; Shingle Mills Bureau; J. H. Cavanagh and W. R. Burke

vs.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN
38 Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Chicago & Northwestern Railway Company; Chicago Great Western Railway Company; Minneapolis & St. Louis Railroad Company; Wisconsin Central Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Bellingham Bay & British Columbia Railroad Company; Columbia and Puget Sound Railroad Company; Port Townsend Southern Railroad Company, and Tacoma Eastern Railroad Company.

No. 1335.

SOUTHWEST WASHINGTON LUMBER MANUFACTURERS' ASSOCIATION

vs.

NORTHERN PACIFIC RAILWAY COMPANY; CHICAGO, BURLINGTON & Quincy Railroad Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company, and Oregon Railroad & Navigation Company.

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the
39 commission having, on the date hereof, made and filed a report containing its conclusions thereon, to which report reference is hereby made:

It is ordered that the said defendants, the Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Rio Grande

Western Railway Company; Denver & Rio Grande Railroad Company; Chicago & Northwestern Railway Company; Chicago Great Western Railway Company; Minneapolis & St. Louis Railroad Company; Wisconsin Central Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Bellingham Bay & British Columbia Railroad Company; Columbia & Puget Sound Railroad Company; Port Townsend Southern Railroad Company, and Tacoma Eastern Railroad Company, and each of them, be, and they are hereby, notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present rates on interstate shipments of lumber, shingles, and other forest products from points of origin in Oregon, Washington, Idaho, Montana, and British Columbia to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Association et al. *v.* Northern Pacific Railway Company et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Association et al. *v.* Southern Pacific Company et al., decided June 2, 1908.

It is further ordered that said defendants, and each of them, be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years rates on said interstate shipments of lumber, shingles, and other forest products from said points of origin to said points of destination which shall in no instance exceed the rates on like shipments between the same points which had been duly filed with the commission as required by law and which were in effect on October 31, 1907, subject to present minimum-weight regulations and to the following limitations:

The rates on said lumber, shingles, and other forest products from said points of origin to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak.; Moorhead and Breckenridge, Minn.; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Mo.; and thence to Port Arthur, Tex., along the Kansas City Southern Railway, also including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding those points to which rates are prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. *v.* Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. *v.* Southern Pacific Co. et al., decided June 2, 1908, which were in effect on October 31, 1907, shall be restored, except that the differentials prescribed in case No. 1348, Potlatch Lumber Co. et al. *v.* Northern Pacific Ry. Co. et. al., decided June 2, 1908, shall be observed; the rates which were in effect on October 31, 1907, from said points of origin to points east of the line mentioned, and excluding all points to which the rates are now the same as to any of the points located on said line between

and including Sioux City, Iowa, and Kansas City, Mo., may be increased, in no case exceeding 5 cents per 100 pounds, and subject to the differentials prescribed in said case No. 1348.

And it is further ordered that these cases be held open for such supplemental proceedings as it may be necessary for interested parties to institute in respect to reparation.

41 X. And your orators further show that the defendant, Interstate Commerce Commission, on the 1st day of September, 1908, in said cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association et al. vs. Northern Pacific Railway Company et al.," entered a further order as follows, to-wit:

"Upon further consideration of the record in the above-entitled cause:

"It is ordered that the order heretofore entered herein by the commission on the first day of June, 1908, and as amended by the order of the commission entered on the 27th day of June, 1908, changing the effective date of said order from Aug. 15, 1908, to Oct. 15, 1908, be further modified and amended so as to read as follows:

"It is ordered that as the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company, have failed and neglected to voluntarily establish a through route for the transportation of forest products between the points hereinafter named, and as no reasonable or satisfactory through route now exists between said points, that said defendants last named be, and they are hereby, required, on or before the 17th day of October, 1908, to establish and maintain in operation for a period of not less than two years thereafter through routes through Portland, Ore., over their respective lines of railroad for the through transportation of fir and spruce lumber, shingles, cedar lumber, and long timbers requiring two or more cars, including with each commodity named other forest products grouped therewith in the tariff hereinafter mentioned, from all points in Washington on the line of the Northern Pacific

42 Railway Company as far north as Seattle and not east of Palmer, Wash., excluding points south and east of Seattle having rail connection with Seattle only by junction points north of Seattle, to Salt Lake and Ogden, Utah, and to all other points in Utah taking same rates as Salt Lake and Ogden on shipments of forest products from Portland, Ore., as shown by Transcontinental Freight Bureau Tariff I. C. C. No. 564 and supplements thereto.

"It is further ordered that the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company be, and they are hereby, notified and required to establish and put in force on or before the 17th day of October, 1908, and maintain for a period of two years thereafter,

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joint through rates applicable to said through routes on the forest products hereinafter named, including with each other forest products grouped therewith in the tariffs last above mentioned, from all points of origin on said through routes to all destinations above named, which said joint through rates shall in no case exceed the following scale in cents per hundred po'nds:

Fir and spruce lumber in carloads	$0.40
Shingles, in carloads	.50
Cedar lumber	.50
Long timbers requiring two or more cars	.50

subject, however, to present minimum weight regulations.

"It is further ordered that in establishing joint rates on the forest products above named applicable to the through routes hereinbefore ordered between the respective points of origin and destinations mentioned, said defendants shall in no case make said joint through rates more than 2½ cents per 100 pounds higher than the rates on the same forest products from Portland, Ore., to said destinations.

"It is further ordered that the above order does not consti-
43 tute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction via the same line when the shorter is included within the longer.

"It is further ordered that said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain notation that it was issued under the authority hereby granted and must refer to the title and number of this case.

"It is further ordered that as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland, Ore., over the lines of the Northern Pacific Railway Company, the Great Northern Railway Company, and the Union Pacific system to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed."

And your orators further show that the defendant, Interstate Commerce Commission, on the 1st day of September, 1908, in said cause No. 1327, entitled "Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al.," entered a further order as follows, to-wit:

"Upon further consideration of the record in the above-entitled cause:

"It is ordered that the order heretofore entered by the commission in said cause on the second day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15th to October 15th, 1908, be, and the same is, hereby further modified and amended by adding thereto the following:

"It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long tim-

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bers requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the
44 Pembina-Port Arthur line, as defined in the original order herein, as to which no such differential, or a differential of less than 10 cents per 100 pounds, existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in Case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

"It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer."

And your orators further show that the defendant Interstate Commerce Commission, on the first day of September, 1908, in said causes No. 1329 and 1335, entitled respectively "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and "Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al.," entered a further order as follows, to-wit:

"Upon further consideration of the record in the above-entitled causes:

"It is ordered that the order heretofore entered by the commission in said causes on the second day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15th to October 15th, 1908, be, and the same is, hereby further modified and amended by adding thereto the following:

"It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers, requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina-
Port Arthur line, as defined in the original order herein, as
45 to which no such differential, or a differential of less than 10 cents per 100 lbs., existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in case No. 1348, Potlach Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

"It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer."

XI. Your orators further show that the defendant Interstate Commerce Commission, on the 25th day of September, 1908, in said causes No. 1327, entitled "Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al.," and No. 1329, entitled "Pacific Coast Lumber Manufacturers' Association

et al. v. Northern Pacific Railway Company et al.," and No. 1335, entitled "Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al.," entered a further order as follows, to wit:

"Upon further consideration of the record in the above entitled causes:

"It is ordered that the order of September 1, 1908, modifying the original order herein be, and it is hereby, amended and modified so that it will read as follows:

"It is ordered that the order heretofore entered by the commission in said causes on the 2d day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15 to October 15, 1908, be, and the same is hereby, further modified and amended by adding thereto the following:

46 "It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers, requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina-Port Arthur Line, as defined in the original order herein, as to which no such differential, or a differential of less than 10 cents per 100 pounds, existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al. must be observed.

"It is further ordered that all increases made under this order in said differentials above those in effect on October 31, 1907, shall become effective on October 15, 1908, and that as to all shipments which moved subsequent to October 31, 1907, and prior to October 15, 1908, the rates prescribed in the original order herein shall be applied.

"It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer."

XII. Your orators further show that the effect of the order so entered by the defendant in said cause 1348, if enforced, will be to reduce the rates fixed by the tariffs of your orators for the transportation of lumber, shingles, and forest products from points within the States of Washington, Oregon, Montana, and Idaho to points in the other States above mentioned, substantially five cents (5c) a hundred pounds, and in some instances more than five cents a hundred pounds.

47 XIII. Your orators aver and charge that in making said order and endeavoring to establish said rates said commission acted without warrant of law; that the said act of 1887 to regulate commerce, and the several acts amendatory thereof and supplementary thereto, particularly the amendment of June 29, 1906, popularly

known as the "Hepburn bill," under which said commission professed to act, are in violation of the Constitution of the United States in that they profess to confer upon said commission executive, legislative, and judicial powers. More specifically pleading in this behalf, your orators say: All through said acts administrative powers are conferred upon the commission. In section 15 the commission is authorized to act as a court, to take judicial cognizance of complaints filed for damages, and, after hearing, to award damages, which award establishes a prima facie right in the complainant and which no carrier against whom the award has been made can resist except by assuming the burden of proof and overthrowing the prima facie effect of the commission's award. The award can be resisted only under penalty of the carriers paying not only the usual costs of suit but an attorney's fee to complainant in addition if cast in the action.

By section 15 of said act said commission is authorized and empowered, after a hearing upon complaint, whenever in its opinion any rate or charge demanded, charged, or collected by any carrier subject to the act is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, to determine and
48 prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case as the maximum to be charged, and to make an order that the carrier shall cease and desist from demanding, charging, or collecting the rate or charge complained of and condemned by said commission, and shall not thereafter, for a period not exceeding two years, publish, demand, or collect any rate or charge in excess of the maximum rate or charge so prescribed by said commission as a substitute for the rate or charge condemned.

Under the provisions of said section and of section 13 of the act, in which the complaint containing a statement of the charges made is more particularly provided for, the commission is empowered to proceed, and the proceeding itself is against the particular carrier or carriers, and such carrier or carriers only as are charged with unreasonableness in the matter of its or their rates; and upon hearing and trial of such carrier or carriers in said proceeding the said commission, under the aforesaid sections, is authorized to adjudge the rate or charge of said particular carrier or carriers to be unreasonable, and, as a consequence thereof, to adjudge against said particular carrier or carriers another different and lower rate as the maximum to be charged by such particular carrier or carriers in such case for a period not exceeding two years. Such proceedings, hearing, trial, determination, and judgment involve and require the exercise of judicial power by the said commission, and it is not competent to Congress to invest said commission with such power; and any investiture, distribution, or exercise of such power in, to, or by said commission is in violation of the Constitution of the United States,
and particularly so much thereof as provides for the distribu-
49 tion and exercise of the judicial authority of the United States; and herein reference is made to section 1 of Article

III of the Constitution of the United States; and the commission has and possesses no such judicial power.

Further pleading as to that provision of section 15 of the act to regulate commerce as amended, which declares that the commission shall prescribe what shall be the reasonable rate or rates, charge or charges, to be observed as the maximum to be charged, your orators say this provision is contrary to the Constitution of the United States, and especially to section 1, Article I, above quoted, in that, by that article all legislative power is confined to the Congress of the United States. The prescribing of a maximum rate which carriers may charge is a legislative function. Congress has not prescribed a maximum rate to govern in the cases provided for, but by said act delegates this power to the commission, and in doing so places in its hands legislative power.

XIV. Your orators aver that in and by section 1 of the said act to regulate commerce it is provided that all charges made by any common carrier subject to the act, for any service rendered or to be rendered in the transportation of property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. That your orators, as the owners and operators of the railroads herein above described, and the franchises, equipment, and appurtenances connected with such railroads, are entitled to the possession, management, and beneficial use thereof, and are authorized to
50 establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable. In and by section 15 of the said act the Interstate Commerce Commission is authorized and empowered, after hearing upon complaint, whenever it shall be of the opinion that any of the rates or charges demanded or charged or collected by any common carrier for the transportation of property as defined in the first section of the act are unjust or unreasonable or otherwise in violation of any of the provisions of the act to determine and prescribe what will be a just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and to make an order that the carriers shall cease and desist from such violation to the extent that the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed. That in and by said section 15 of said act it is provided that all orders of the commission prescribing rates shall take effect within a reasonable time, and not less than 30 days after the making of the same, and shall continue in force for such period, not exceeding two years, as established and prescribed by the order of the commission, unless the same shall be suspended or modified or set aside by the commissioners, or be suspended or set aside by a court of competent jurisdiction. That in and by the 16th section of the said act it is provided that any carrier, or any officer or agent of any carrier, who knowingly fails or neglects to obey any order of the commission pre-

scribing rates as provided in said section of the act shall for-
51 feit to the United States the sum of $5,000 for each offense, and that each distinct violation shall be deemed a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

Your orators aver that the present rates attempted to be set aside by said order, but fixed and established by your orators for the transportation of lumber, shingles, and forest products from points aforesaid mentioned in the order of the said commission, and each of the said rates are and will be for more than three years hence low, just, and reasonable rates for the service performed in the transportation of said commodities between said places and each of them, and that the rates prescribed by the commission in and by its order are, and each of said rates is and will be for more than three years hence, unjust and unreasonable for the service performed in the transportation of lumber, shingles, and forest products, and are and will be inadequate compensation to your orators for the service rendered.

Your orators aver that by Article V of the amendments to the Constitution of the United States your orators have the right to a judicial investigation in a court by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy of the question as to the reasonableness of the said rates so fixed and established by your orators, and of the question as to the reasonableness of the said rates so fixed and established by the said commission as aforesaid, and of each of said questions.

That the attempt of the commission in and by said order sought to be set aside herein, to set aside and annul the rates established
52 by your orators, and the establishing of the said rates prescribed by said orders and each of them by the said commission, against the will of your orators and depriving your orators thereof without due process of law, in violation of Article V of the amendments to the Constitution of the United States; and that the making of the said order of the commission herein set out was pro tanto a taking and depriving the company of its property without due process of law, in violation of Article V of the amendments to the Constitution of the United States, and thereby void and of no effect.

Your orators further aver that the attempt of sections 15 and 16 of the said interstate commerce act to make any order of the commission prescribing rates to be charged for the transportation of property became effective of its own force prior to a hearing in a court of justice of the question of the reasonableness of the rates prescribed by said order, and said sections 15 and 16 in that regard are void for the reason that in and by section 1, Article III of the Constitution of the United States, all judicial power is conferred upon a Supreme Court of the United States and such inferior courts as Congress may establish, and the judges of said Supreme Court

and such inferior courts shall hold office during good behavior, and the said commission has no power to prescribe any time upon which any order of the said commission prescribing rates for the transportation of property to take effect, and that the said order of the said commission is void and of no effect.

That section 16 of said act is unconstitutional and void in that it is therein provided that your orators and each of them, and any officer or agent of your orators, knowingly failing or neglecting

53 to obey the said order of the commission herein set forth, shall forfeit to the United States the sum of $5,000 for each day that your orators or said officers or agents fail to obey said order, notwithstanding that the question of the reasonableness of the rates established by the said order has not been judicially investigated by due process of law in any court of justice, and in that said section makes said order a finality unless suspended by the commission or by some court of competent jurisdiction, and subjects your orators to penalties and forfeitures as therein provided, and deprives your orators of their property without due process of law, contrary to Article V of the amendments to the Constitution of the United States, and the force and effect of said order sought to be enjoined and set aside herein has been to compel your orators, in order to prevent their property from being forfeited through the operation of such penalties and to save the agents of your orators from being subjected to such penalties (notwithstanding such penalties are only imposed because of said order of said commission attempting to prescribe and establish such rates) to publish and put into effect on October 15, 1908, the unreasonably low rates so attempted to be prescribed by said commission in and by said order, whereby your orators aver that their property has been and is now being taken from them against their will, and without due process of law, and without their having had a day in court and the right to a judicial investigation by a court under due process of law for the determination of the truth of the matter in controversy before said commission.

54 XV. Your orators further show that the only authority sought to be vested in the defendant, Interstate Commerce Commission, to fix rates for the transportation of property over the lines of your orators' railways is conferred by said section fifteen of said amended act of Congress, approved June 29, 1906, by the terms whereof it is provided that whenever the said commission shall, after a full hearing, be of the opinion that any of the rates or charges demanded, charged, or collected by any common carrier or carriers, subject to the provisions of said act for the transportation of property, are unjust or unreasonable, it shall be authorized "to determine and prescribe what will be the just and reasonable rate or rates, charge or charges to be observed in such case as the maximum to be charged," and your orators further show that the said order so entered in said cause No. 1348 is further unauthorized and void, for the reason that your orators have at no time prescribed rates for the transportation of lumber, shingles, or forest products between the

points named in said order in excess of charges which are just and reasonable. And furthermore, upon the hearing before the defendant in said two causes in which said order was so entered, no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust, or unreasonable, and the defendant, Interstate Commerce Commission, entered this said order without any justification therefor, and without any evidence or finding of fact that said rates so fixed by said defendant were excessive, unjust, or unreasonable.

55 XVI. Your orators further show that the rates for the transportation of lumber, shingles, and forest products from points within to points without the States of Washington, Oregon, Montana, and Idaho, as fixed by the said tariffs, so in effect, on October 21, 1907, were substantially the same rates that were fixed by your orators in the year 1893 and solely by reason of the fact that said rates had been long continued was the conclusion reached by the defendant, Interstate Commerce Commission, that the rates complained of in said cause No. 1348, which were and are higher than the rates theretofore in effect, were unreasonable and unjust, and solely by reason of this fact was said order so entered by the commission, but your orators show, that it was established by uncontradicted evidence upon the hearing before the commission that the circumstances and conditions which existed at the time said previous rates were established did not exist on November 1st or 2nd, 1907, and did not exist at the time of said hearing, and had not existed for more than three years prior thereto. That is was established at the hearing before the defendant commission by uncontradicted evidence that at the time said previous rates were established the condition of the lumber market in the United States was such that the lumber product of the States of Washington, Oregon, Montana, and Idaho could not move to other States in any considerable quantity at rates higher than those so established, but that the conditions in this respect have been gradually changing by reason of the exhaustion of the timber supply in Michigan, Minnesota, and Wisconsin and the rapid

56 increase in the value of the yellow pine product of the Southern States, so that it was established at said hearing by uncontradicted evidence that for a period of at least three years before November 1st, 1907, the occasion for maintaining rates so low as those established in 1893 had ceased. And your orators further aver that the said defendant commission in the determination of the issues involved in said complaint expressly found that in and prior to the year 1893 the lumber interests in the States of Washington, Oregon, Montana, and Idaho were in their infancy and except for purely local consumption mills located therein disposed of their surplus at points reached by water transportation, and that the volume of business was small for a considerable time even after the railroads of your orators reached the coast; that prior to the year 1893 the rates on lumber and forest products from said States to Omaha, St. Paul, and other eastern destinations were higher than the rates established

in 1893, and that under said higher rates little, if any, of the lumber in said States moved eastward to said eastern destinations; at that time and for several years thereafter and until the practical disappearance of competition with white pine lumber manufactured in Wisconsin, Minnesota, and Michigan, manufacturers of lumber in Washington, Oregon, Montana, and Idaho were unable to meet the competition of southern yellow pine and northern white pine in the States hereinbefore referred to, but that following upon the reduction in said rates inaugurated in 1893, the lumber interests in said States of Oregon, Washington, Montana, and Idaho increased enormously and many mills were built in the interior, so that at and for several years prior to the hearing of said complaint shipments were
57 and had been constantly made in large amounts eastward by the lines of your orators to eastern markets, amounting to a large percentage of the output of said mills; and your orators further aver that it was expressly found to be a fact by the defendant commission that during the period of time that elapsed after the reduction in said rates in 1893 down to the time of said hearing, in the States of Oregon, Washington, Montana, and Idaho, the price of manufactured lumber had greatly increased with increasing profits to the manufacturer, resulting from the market thus secured to him through said reduced rates, and the general advance in price in said markets during the years aforesaid, and the generally prosperous conditions surrounding the manufacture and sale of lumber in the States hereinbefore referred to, whereby your orators aver that the commission found that each and every of the conditions surrounding the lumber industry had completely changed from the time said rates were established in 1893, and that the prosperous condition of said industry on and for more than three years prior to November 1, 1907, did not require or justify the further maintenance of rates so low as those established in 1893, under the circumstances aforesaid. It was also shown by uncontradicted evidence at said hearing that your orators established and maintained the rates in effect before November 1st, 1907, for the reason that in 1893, and for many years thereafter, the great volume of traffic moving over your orators' lines of railway was west-bound, and the States of Washington, Oregon, Montana, and Idaho, and the neighboring territory furnished insufficient traffic to load east-bound the cars employed in moving the west-bound traffic, and that the rates on lumber, shingles, and forest
58 products were so fixed and at an abnormally low point to furnish loads for cars which would have otherwise moved east without revenue-producing freight, but that for some time before November 1st, 1907, the conditions had so changed that it was necessary to haul empty cars to the States of Washington, Oregon, Montana, and Idaho in order to furnish facilities for the movement of lumber, shingles, and forest products. It was also shown at said hearing by uncontradicted evidence that every other important element in the cost of transporting the commodities in question had greatly increased over the cost in 1893 and subsequent years.

Your orators further show that the conditions with respect to the transportation of the commodities in question so existing on November 1st, 1907, and for several years before that time, continued to the time of said hearing, as was shown by the uncontradicted evidence there produced, and, as your orators are informed and believe, will continue for at least a period of two years from October 15, 1908. Your orators further show that notwithstanding the fact that it was so conclusively established at said hearing before the defendant commission that such rates maintained by your orators before November 1st, 1907, were established and maintained under conditions wholly different from those existing at the time the rates complained of took effect and at the time of the hearing, the defendant, Interstate Commerce Commission, held as a matter of law that the continuance of said previous rates raised a presumption that such higher rates were unjust and unreasonable, wherein said commission acted erroneously and through a mistake and under a misapprehension of the law and without authority.

59 XVII. Your orators further show that the rates so fixed by the tariffs so becoming effective on November 1st and 2nd, 1907, are lower than the rates charged for any like service by any carriers in the United States, and lower than rates heretofore fixed by the defendant, Interstate Commerce Commission, for like services. The rates so fixed by said order are unremunerative and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the States of Washington, Oregon, Montana, and Idaho to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order, and your orators, upon information and belief, aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on other traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden not only upon your orators but upon the shippers of other commodities.

Your orators further show that the enforcement of said order of the defendant will deprive your orators of revenue from the transportation of lumber, shingles, and forest products to which they would be entitled under the rates fixed by said tariffs so filed,

60 published, and posted to an amount of more than one hundred thousand dollars per year, and each of your orators, by the enforcement of said order, will be deprived of revenue in a sum greatly in excess of two thousand dollars per year.

XVIII. Your orators, therefore, pray that a decree be entered herein setting aside and annulling the said order of the defendant, Interstate Commerce Commission, in said cause No. 1348 and per-

petually enjoining the enforcement of said order, and perpetually enjoining the defendant, and its members, their agents, servants, and representatives, from enforcing said order and from taking any steps or instituting any proceedings for the enforcement of said order.

And your orators further pray that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that your honors grant unto your orators a writ of subpœna, directed to said Interstate Commerce Commission, commanding it at a certain day and under a certain penalty therein to be specified to be and appear before your honors in this honorable court and then and there full, true, and complete answer make to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived), and to stand to and abide such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will every pray.

Great Northern Railway Company, by Robt. I. Farrington, 2nd vice president (corporate seal); Northern Pacific Railway Company, by J. M. Hannaford, 2nd vice president (corporate seal); Chicago, Burlington & Quincy Railroad Company, by D. Miller, 1st vice president; Union Pacific Railroad Company, by J. C. Stubbs, its traffic director; Oregon Short Line Railroad Company, by J. C. Stubbs, its traffic director; Oregon Railroad & Navigation Company, by J. C. Stubbs, its traffic director; Southern Pacific Company, by J. C. Stubbs, its vice president; James B. Kerr, Hale Holden, of counsel for Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company; W. W. Cotton, F. C. Dillard, of counsel for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company; James B. Kerr, Hale Holden, solicitors for complainants, Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company; W. W. Cotton, P. L. Williams, W. F. Herrin, P. F. Dunne, N. H. Loomis, F. C. Dillard, solicitors for complainants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company.

61

62

STATE OF MINNESOTA,

County of Ramsey, ss:

R. I. Farrington, being first duly sworn, on oath states that he is the second vice president of the Great Northern Railway Company

in the above entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true, except where made upon information and belief, and where so made affiant states that he believes them to be true.

ROBT. I. FARRINGTON.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

[SEAL.] EARLE W. MCELROY,
Notary Public, Ramsey County, Minnesota.

My commission expires April 14, 1911.

63 STATE OF MINNESOTA,
County of Ramsey, ss:

J. M. Hannaford, being first duly sworn, on oath states that he is the 2nd vice president of the Northern Pacific Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. M. HANNAFORD.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

[SEAL.] W. T. FRANCIS,
Notary Public,
Ramsey County, Minnesota.

My commission expires April 5, 1911.

STATE OF ILLINOIS,
County of Cook, ss:

D. Miller, being first duly sworn, on oath states that he is the 1st vice president of the Chicago, Burlington & Quincy Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations contained therein are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

D. MILLER.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] J. H. PETTIBONE,
Notary Public.

64 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Union Pacific Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained

are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Short Line Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON,
Notary Public.

65 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Railroad & Navigation Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the vice president of the Southern Pacific Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON,
Notary Public.

(Endorsed:) Filed October 20th, 1908. Henry D. Lang, clerk.

66 Thereafter and on November 17th, 1908, the following amended bill of complaint was filed in said cause, to wit:

67 In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY, Northern Pacific Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 885.

Amendment to amended bill of complaint.

To the honorable judges of the Circuit Court of the United States within and for the District of Minnesota:

Great Northern Railway Company, a corporation organized under the laws of the State of Minnesota; Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin; Chicago, Burlington and Quincy Railroad Company, a corporation organized under the laws of the State of Illinois;

68 Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Railroad and Navigation Company, a corporation organized under the laws of the State of Oregon; and Southern Pacific Company, a corporation organized under the laws of the State of Kentucky, complainants herein, bring this, their amendment to their amended bill, against the defendant, the Interstate Commerce Commission, established and existing under and by virtue of an act of the Congress of the United States.

And thereupon your orators complain and make amendment to their said amended bill of complaint herein as follows:

I. After the words "and subsequent years," in line 17 on page 27 of the amended bill of complaint, the same being in paragraph 16 thereof, insert:

"And you orators further aver that the defendant commission expressly found in its determination of said complaint that in the year 1893, when said low rates were established, the empty-car movement on the lines of your orators was east-bound, and that at that time and for some years thereafter the great volume of traffic moving over your orators' lines of railway was west-bound; but your orators aver that said commission also found that this condition in and about the

transportation of lumber from the States of Oregon, Washington, Montana, and Idaho had likewise changed since said rates were established in that at and for several years prior to the hearing of said complaint the direction of the empty-car movement on the
69 lines of your orators has been reversed and the same is now west-bound, and your orators are now and for several years prior to November 1, 1907, have been compelled to haul westbound large numbers of empty cars for the purpose of furnishing equipment in the States of Oregon, Washington, Montana, and Idaho for the loading of lumber east-bound into the States hereinbefore referred to, where said lumber is now sold. And your orators further aver that the commission not only expressly found that the volume of lumber shipped during the last few years over the lines of your orators east-bound had enormously increased and that the lumber interests engaged in said traffic have been extraordinarily prosperous in the past few years, but also found that the density of traffic on the lines of your orators has increased to such an extent that it is more than can be advantageously handled on single-track roads such as the lines of your orators practically are, and that because of the increase in density of traffic aforesaid your orators have been compelled to, and are now engaged in, constructing double-track extensions in some cases, in order more advantageously and expeditiously to handle this increased traffic. Your orators further aver that the commission found that the expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials, over and above the expense of operation as it existed at and for a few years after the year 1893, and further found that the increased traffic of your orators has required additional working force and equipment, thus recognizing and establishing the contention of your orators that in the matter of the transportation of lumber from the States of
70 Oregon, Washington, Montana, and Idaho the conditions had greatly changed from the conditions in force at the time said rates were established in 1893."

Wherefore your orators pray, as they have before prayed in their amended bill of complaint, that a decree be entered herein setting aside and annulling the said order of the defendant Interstate Commerce Commission, in said cause No. 1348, and perpetually enjoining the enforcement of said order, and perpetually enjoining the defendant, and its members, their agents, servants, and representatives, from enforcing said order and from taking any steps or instituting any proceedings for the enforcement of said order.

And your orators further pray, as in their amended bill of complaint, that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that said respondent may answer, but not under oath (such oath being hereby waived), according to the practice of this court, all and singular the matters stated and charged in said amended bill of complaint, and those hereinbefore stated and charged in this your orators' amendment to said amended bill of

complaint, and to stand to and abide such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Solicitors for Complainants.
HALE HOLDEN,
Of Counsel.

(Endorsed:) Filed November 17, 1908. Henry D. Lang, clerk.

71 Thereafter and on December 16th, 1908, the following demurrer and answer of Interstate Commerce Commission was filed in said cause, to-wit:

72 In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, DEFENDANT.	In Equity. No. 885.

Demurrer and answer of Interstate Commerce Commission, abovenamed defendant, to the amended bill of complaint of the abovenamed complainants.

(1) Demurrer.

This defendant, the Interstate Commerce Commission, by protestation, not confessing or acknowledging all or any of the matters and things in the said amended bill contained to be true in such manner and form as the same are therein set forth and alleged, as to so
73 much of the said amended bill (Paragraph XIII and Paragraph XIV, excepting the clause on page 35 beginning, "Your orators aver, etc.") as seeks to aver that the act to regulate commerce as amended June 29, 1906, is unconstitutional and void, does demur thereto, and for cause of demurrer shows that said complainants have not, as appears by said portions of their said amended bill, made out any title to any equitable relief.

Defendant specially demurs to said portion of complainants' amended bill and assigns as such grounds of demurrer:

I. That the power to prescribe maximum rates to be charged in the future on interstate traffic has constitutionally been delegated by Congress to this defendant.

II. That the Interstate Commerce Commission, in hearing and considering evidence and arriving at conclusions regarding the reasonableness of rates to be established, proceeds in accordance with due process of law and does not therein or thereby exercise the judicial power invested by the Constitution in the courts of the United States.

III. That in entertaining complaints for reparation and in granting orders for the payment of money thereon, which orders
74 are prima facie evidence of damages owing to complainant before this defendant, the Interstate Commerce Commission does not exercise such a purely judicial function as is forbidden by the Constitution.

IV. That the provision of the statute which authorizes the Interstate Commerce Commission to entertain complaints for reparation and to grant orders for the payment of money thereon is entirely separable and distinct from the remaining provisions of the act to regulate commerce as amended, and does not in anywise affect the constitutionality or validity of the remaining portions of the act.

V. That whether or not in entertaining complaints for reparation and in granting orders for the payment of money thereon the Interstate Commerce Commission does exercise such a purely judicial function as is forbidden by the Constitution can not be drawn in question in this case, for that there is no allegation that this defendant has exercised such power.

VI. That the portion of the act to regulate commerce, as amended, which provides for penalties for willful disobedience to the orders of the commission is not offensive to the fifth amendment to the Constitution.

75 VII. That the portion of the act to regulate commerce which provides for penalties for willful disobedience to the orders of the commission is entirely separable from the remaining portions of the statute and does not in any wise affect the constitutionality or validity of the remaining portions of the statute.

VIII. That whether or not the penalties prescribed in the act to regulate commerce, as amended, for willful disobedience to the orders of the commission would render the statute in that regard offensive to the fifth amendment to the Constitution can not be drawn in question in this case, for that it affirmatively appears that the complainants while seeking relief in this court are observing and obeying the said orders of the commission and are not exposed to prosecution for penalties or forfeitures.

IX. That in providing for penalties against common carriers violating the act to regulate commerce by disobeying the orders of the said commission the statute does not offend the fifth amendment to the Constitution, for that the statute expressly authorizes a suit in the Circuit Court of the United States to enjoin, suspend, or set aside the orders of the commission either before or after such orders
76 become effective, and said statute further confers jurisdiction and lays the venue for the judicial hearing according to estab-

lished methods before any penalties or forfeitures can be declared, thereby preserving due process of law.

Wherefore, for divers other good causes for demurrer appearing in the said amended bill, defendant prays the judgment of this honorable court whether it shall be compelled to make any answer to such parts of the said amended bill as it has hereinbefore demurred to.

(2) Answer.

And the defendant, the Interstate Commerce Commission, not waiving the said several demurrers, but wholly relying and insisting thereon, for answer to so much of the residue of the said amended bill as it is advised that it is material or necessary for it to make answer unto, answering, says:

I. Defendant admits the allegations of Paragraph I.

II. Defendant admits the allegations of Paragraph II.

III. Defendant admits the allegations of Paragraph III.

77 IV. Defendant admits the allegations of Paragraph IV.

V. Defendant admits the allegations of Paragraph V that the rates named in said tariffs so filed, published, and posted thereupon became and were the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all the points in the States of Washington, Oregon, Montana, and Idaho, named in said tariffs, to each and all the points of destination in said other States named in said tariffs; but defendant denies that the rates named in said tariffs were on November 1, 1907, ever since have been, and now are neither unreasonable nor unjust; and defendant further denies that said rates will continue to be neither unreasonable nor unjust for a period of two years from October 15, 1908.

VI. Defendant admits the allegations of Paragraph VI.

VII. Defendant admits the allegations of Paragraph VII.

VIII. Defendant admits the allegations of Paragraph VIII.

78 IX. Defendant admits the allegations of Paragraph IX.

X. Defendant admits the allegations of Paragraph X.

XI. Defendant admits the allegations of Paragraph XI.

XII. Defendant admits the allegations of Paragraph XII that the effect of the orders so entered by the defendant in said cause 1348 if enforced will be to reduce the rates established by complainants for the transportation of lumber, shingles, and forest products from points within the States of Washington, Oregon, Montana, and Idaho to many points in other States 5 cents per 100 pounds, and in some instances more than 5 cents per 100 pounds; but defendant avers that the net result of the enforcement of said orders in said cause will be to leave in full force and effect rates to most of the points embraced in said order which are materially higher than the rates which hitherto had been voluntarily charged by complainants for many years previous to November 1, 1907.

XIII. (Entire paragraph in amended bill of complaint covered by special demurrer.)

79 XIV. (All of Paragraph XIV in the amended bill of complaint is covered by special demurrer except the clause on page 35 beginning "Your orators aver, etc.")

Defendant denies the allegations of Paragraph XIV that the rates in effect prior to the effective date of the orders complained of for the transportation of lumber, shingles, and forest products between the points mentioned in said orders, and that each of the said rates are, and will be for more than three years hence, low, just, and reasonable rates within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law.

Defendant avers that this court can not and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect just and reasonable.

Defendant denies that the rates prescribed by it in and by its orders are or that any of them is or will be for more than three years hence, unjust and unreasonable within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law. Defendant
80 avers that this court can not and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect unjust and unreasonable.

Defendant further denies that the rates fixed by this defendant are, or that any of them is or will be, to complainants, for the service rendered, inadequate compensation within the aforesaid constitutional guaranty or otherwise.

Defendant avers that complainants should not be heard to maintain this suit in equity for that the said complainants have a complete and adequate remedy by proceedings before this defendant in that all the matters and things in the complainants' amended bill set forth are cognizable before this defendant; that upon application of the complainants, or of any of them, and upon proper showing, this defendant has power to suspend, modify, or amend, in whole or in part, the orders complained of, and to consider any and all of the matters in the complainants' amended bill set forth, and to take such action thereon, and to make such order thereon, as in its judgment would be proper to make; and that in advance of such application by the complainants to this defendant the complainants are not entitled as a matter of right to invoke the jurisdiction of this court in equity.

Defendant further avers that this court, sitting as a court
81 of equity, should not herein either hear or determine the rights of the complainants upon any state of facts which were within the knowledge of the complainants and which they failed and neglected to present before this defendant at the time of the hearings

out of which the orders complained of grew, nor on account of any facts, matters, or things which may have arisen since said hearings except such facts, matters, or things be first presented by application for rehearing or otherwise to this defendant. Neither does said amended bill of complaint set forth any reason why any of such matters and things could not be or were not presented to this defendant, nor that any facts, matters, or things have arisen since the said hearings, nor that the complainants or either of them have in any manner been prevented from presenting to this defendant for its consideration any of the matters or things in the complainants' amended bill set forth.

Complainants have failed to make any application to the defendant for a rehearing of said matter, on account of any such facts, to have said orders suspended, set aside, or modified, although complainants well knew at all times since June 2, 1908, the date of the report of the defendant, that the orders complained of would be issued as a matter of course unless upon application of the complainants herein (defendants before the commission) such facts should be shown to this defendant as would entitle complainants to have said orders suspended, modified, or set aside.

82 Defendant further avers that this court ought not to consider the averments in complainants' amended bill of complaint that the transportation of traffic on rates prescribed by the defendant will not afford a fair compensation or will entail a loss, or that the same are unremunerative, or that the same are unjust and unreasonable for the service performed, because such allegations and declarations are statements of conclusions and opinions of interested parties and do not have coupled therewith any statement of any of the essential elements of facts upon which or from which the reasonableness of a rate can be determined.

Defendant further says that it is vested with the exclusive right and power of determining what are just and reasonable maximum rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry upon original evidence leading to an independent conclusion; that in determining what are just and reasonable maximum rates to be charged in the future this defendant must and does exercise discretion; that this court ought not and can not substitute its judgment and discretion for the judgment and discretion of this defendant; that this court will only determine whether the rates prescribed by this defendant are just and reasonable within the meaning of the constitutional guaranty which compels the establishment of rates with reasonable regard for the cost to the

83 carrier of the service rendered and for the value of the property employed therein and also with reasonable regard for the value of the service to the public.

This defendant further says that the complainants do not aver in their amended bill that they or either of them are in possession of any information or facts upon which to base the said conclusion that the

rates established by this defendant are unjust and unreasonable, other than the facts and evidence which were presented before the defendant in the hearing out of which the orders complained of grew, all of which facts and evidence were presented to this defendant and were by it duly considered.

Defendant shows that the ascertainment mathematically of what it costs to haul a given quantity of traffic of a certain description between two points upon a certain line of railway is impossible; that over the same line of railway, hauled by the same engine, are carried in the same train traffic in varying quantities widely different in character and value; that over the same line of railway is hauled both freight and passenger traffic in different trains of varying size; that the fixed charges of maintenance and operation can not be apportioned with mathematical exactness to the one kind of traffic or to the other; that in the same train over the same line of railway are hauled both interstate and intrastate traffic;
84 that the cost of operation and of handling these two classes of traffic can not be mathematically determined so as to apportion to each class of traffic its proper division of cost; that while a considerable proportion of cost and expense can be located to the particular service or the particular traffic in a given instance, yet that varies materially with conditions on particular lines of road with the volume, density, and direction of movement, and that no method of apportionment between different articles of freight can be devised except that which involves the exercise of discretion and judgment, results varying according to the method used.

Defendant therefore says that the statements and allegations of Paragraph XIV of the amended bill above referred to are mere allegations and opinions which involve consideration of all these complex and difficult problems and should not be accepted for the purpose of setting aside the orders of this defendant.

XV. Defendant denies that complainants have at no time prescribed rates for the transportation of lumber, shingles, and forest products between the points named in said orders in excess of charges which were just and reasonable. Defendant denies that upon the hearing before it in said cause in which said orders were so entered no evidence was considered or offered which in anywise showed or tended to show that the rates complained of
85 therein were excessive, unjust, or unreasonable; denies that the defendant entered its orders without any justification therefor, and without any evidence or finding of fact that said rates so complained of were excessive, unjust, or unreasonable. On the contrary, defendant avers that evidence was introduced before this defendant showing, and tending to show, that the rates complained of before this defendant and condemned by it in the orders in question were unjust and unreasonable, and this defendant, after a full hearing afforded to all the parties to the complaint before it, was of the opinion that said rates so complained of were unjust and unreasonable and entered its orders accordingly.

Defendant avers that in accordance with the statute in such cases made and provided it made a report in writing in respect to the matter under investigation, which report stated the conclusions of this defendant, together with its decision, order, and requirement in the premises. Said report or opinion is attached hereto as Exhibit A, and is made part hereof as fully as if the same was set forth in full in this paragraph of the answer. Defendant says that the facts shown by said investigation material to be considered by this defendant are stated fully, fairly, and completely in said report.

Defendant further says that every opportunity was afforded
86 to complainants herein in the hearing before this defendant to introduce any and all testimony and evidence which in anywise was pertinent to the matters involved in said hearing, and that at said hearings complainants herein declined to introduce further testimony and announced to this defendant that they had no further evidence to offer, and so rested their case on the evidence before this defendant.

Defendant further says that while the matters and things embraced in what is known as docket No. 1348 were pending before this defendant there were at the same time pending similar matters and things in what is known as dockets Nos. 1327, 1329, 1331, 1335, and 1054, and that by agreement of counsel in case No. 1348, to which complainants herein were parties defendant, any and all matters and things presented to this defendant in the hearings in said other cases might and should be considered by this defendant with the same force and effect as if the same had been formally presented and made part of the record in No. 1348.

XVI. Defendant denies the allegations of Paragraph XVI.

Defendant avers that the conclusions sought to be drawn from said testimony tending to show the facts stated in said paragraph were strongly and earnestly controverted by complainants in the
87 hearing before this defendant, and much testimony in opposition to the claims of the defendants in the hearing before this defendant was introduced, and that there was some conflict in the testimony and evidence before this defendant.

Defendant further avers that each and every member of the Interstate Commerce Commission fully realized the great importance of the issues involved in the complaint before this defendant; that each and every member of this defendant gave personal attention to all the testimony offered upon either side during the several days occupied in the taking of testimony, and afterwards heard all parties at great length in oral argument; and that the members of this defendant carefully examined and considered the various matters of fact and argument contained in the voluminous briefs filed by each party to the hearing before this defendant. Defendant further avers that the orders complained of in this amended bill of complaint, and the report and opinion attached hereto and made a part hereof as "Exhibit A," are the result of the most painstaking consideration and care on the part of each individual member of this defendant.

This defendant avers that by the statute it has been authorized and required to perform certain duties; that in the distribution of the powers of government this defendant is required to determine, in cases like that heard by it (out of which the orders complained
88 of in this case grew), what shall be the just and reasonable transportation charge to be charged by carriers subject to said act for the future; that authority to determine that issue could not be under the Constitution of the United States conferred upon this court, and, even if it could be so conferred, such power and authority has not been so conferred by any existing law. Defendant further avers that it is both the right and the duty of this court to protect these complainants against arbitrary and unlawful exercise of authority conferred upon this defendant. Yet this court ought not, and will not, review the judgment and findings of this defendant unless it be made clearly to appear that the orders complained of transcend the pale of legitimate regulation and constitute such a violation of the constitutional rights of the carrier as to shock the conscience of a chancellor.

Defendant further avers that the establishment of a rate of transportation for the future involves the exercise of discretion and judgment; that Congress has attempted to establish in this defendant an expert tribunal for determining questions of this character, and that this court will not undertake to say whether, upon all the facts existing in this case, it would have arrived at a different conclusion upon the facts presented as to what the rates should be for the future.

89 XVII. Defendant denies the allegations of Paragraph XVII that the rates in effect on November 1 and 2, 1907, are lower than the rates charged for like service by any carrier in the United States, and lower than rates heretofore fixed by this defendant for like services. Defendant denies that the rates fixed by the orders of this defendant are unremunerative and confiscatory in any sense. Defendant avers, on the contrary, that the rates established by the orders complained of are higher than the rates voluntarily established by the carriers for the same transportation covering a long period of years. Defendant avers that the complainants herein during the last ten years have received from their operations as common carriers munificent returns upon the property invested, and that said returns upon the property aforesaid are far above the average received by carriers in other parts of the United States.

Defendant avers that it is unable to determine from the amended bill of complaint what the complainants regard as constituting cost of conducting transportation. Defendant denies that the rates fixed by the orders of this defendant are not, and will not be, sufficient to pay the cost of conducting transportation and any just or fair return upon the value of the property used in said transportation, no matter whether complainants refer to the mere cost of hauling the
90 traffic or whether complainants refer to the proportion of fixed

charges properly attributable to said transportation and the cost of operating such transportation.

Defendant further avers that in considering what is a just and reasonable rate for the future many things are to be considered; that one of these is the question as to what extent the traffic covered by the orders of this defendant shall contribute to the total profit of the complainants herein.

Defendant admits that the enforcement of the orders complained of involves to each of the complainants an amount in excess of two thousand dollars per year.

Defendant therefore avers in conclusion that in the making of the orders complained of this defendant considered every material fact and circumstance which it should have considered, and failed to consider no material fact or circumstance which it should have considered.

XVIII. Defendant avers that the allegations of complainants' amended bill of complaint are vague and uncertain; that they do not set forth facts with sufficient certainty to show the conclusions which are therein stated, to the effect that the rates prescribed by this defendant in its orders complained of will require transportation at less than the cost of service, or at a loss to the carrier, or that
91 the same will be unremunerative, or that the same are unjust and unreasonable, or that the same are confiscatory; and that because of the failure on the part of the complainants to specify the particular items of returns from said rates, and the particular expense incident to the transportation mentioned in the defendant's order, the defendant is unable to know what complainants expect to show at final hearing, or otherwise, and on this account is not able more specifically to answer the general allegations, averments, and conclusions of the amended bill of complaint, and the defendant says that it ought not to be required to answer such allegations.

The defendant therefore denies each and all of the allegations of complainants' amended bill of complaint not otherwise specifically denied herein, and which defendant is advised is material or necessary to be answered; and says that the conclusions, inferences, and arguments are erroneous and without foundation, and that the rates which this defendant prescribed are in all things just and reasonable and will afford to each of the carriers complainant a just compensation in all instances for the service performed.

The defendant denies that the complainants are in any wise entitled to the relief, or any part thereof, prayed for in said amended bill of complaint, or any relief whatsoever, and the defendant claims the same advantage of this its answer thereto as if it had demurred to said amended bill of complaint, and prays to be dismissed
92 with its reasonable charges in this behalf most wrongfully sustained.

INTERSTATE COMMERCE COMMISSION,

By ——— ———,

Secretary thereof, thereunto duly authorized.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

L. M. WALTER,
Solicitor for Defendant.

WASHINGTON, *District of Columbia, ss:*

Edward A. Moseley, being first duly sworn, says on oath that he is the secretary of the defendant; that he knows the contents of the foregoing demurrer and answer; that the said demurrer is not interposed for delay; and that the matters and things stated in the answer are true to the best of his knowledge and belief.

———— ————,
CHARLES C. HOUPT,
United States Attorney,
LUTHER M. WALTER,
Solicitors for Defendant.

Subscribed and sworn to before me this the —— day of December, 1908.

———— ————,
Notary Public.

93 Exhibit A.

94 POTLATCH LUMBER COMPANY ET AL.
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL. } No. 1348.

(Submitted April 14, 1908. Decided June 2, 1908.)

Complainants, owning lumber mills in the interior of Washington and Oregon, and in Idaho, allege that prior to November 1, 1907, the products of their mills found markets in the States of North and South Dakota, Minnesota, Iowa, Illinois, Nebraska, Kansas, Missouri, and Colorado, but owing to defendants' increase in lumber rates on said date between such points their markets have been greatly restricted and complainants' business materially injured; that the increased rates are unreasonable, and that lower rates should be allowed from their shipping points than those applying from the Pacific coast by even greater differentials than were in force prior to said date. The evidence shows that differentials under the coast should apply to the interior points and the defendants admit in part by their tariffs the propriety of differentials against the Pacific coast. Held, that the present relation of rates is unjust and unreasonable, and should be discontinued; and that the differentials named in the report should be substituted therefor.

H. M. Stephens for complainants.

James B. Kerr, Hale Holden, W. W. Cotton, and F. C. Dillard for defendants.

Joseph N. Teal for intervener.

Report of the commission.

COCKRELL, Commissioner:

The complainants, who are individuals, copartnerships, limited-liability stock companies, and corporations, filed their petition November 27, 1907. They manufacture, buy, sell, and ship lumber and forest products, their mills and shipping points being located in the States of Washington, Oregon, and Idaho east of the Cascade Mountains. These shipping points are within what is known as the Inland Empire, and, for purposes of transportation, are described as interior points as distinguished from Pacific coast points. The lumber of this district, prior to November 1, 1907, found markets in various States beyond the vicinity of its origin, particularly in North Dakota, South Dakota, Minnesota, Iowa, Illinois, Nebraska, Kansas, Missouri, and Colorado; the Dakotas and Nebraska being the chief consuming territory; and was transported to these markets by such of the rail carriers named as defendants as formed the through route to the point of delivery. Prior to that date a large interstate business in lumber and forest products had been built up by the com-
95 plainants, in which they used the facilities offered by the defendants, and prospered under the rates in force for such services. Effective on that date, however, the defendants, with the exceptions hereafter noted, raised the rates on the commodities shipped by the complainants from points of origin to points of destination, the tariffs making such changes being known as Trans-Continental Freight Bureau East-Bound Special Tariff No. S. R. 963, I. C. C. No. 850, with Supplements 1 and 2, and Great Northern I. C. C. No. A–2667. The complainants allege that by reason of such increase in rates they are now unable to meet competition where formerly they prospered. The complainants, in the central west, are in competition with the fir of the coast and the yellow pine of the south. All the defendants are parties to one or the other of the tariffs named except the Idaho & Washington Northern Railroad Company, which did not become a party to the Great Northern I. C. C. No. A–2667 until the issuance of Supplement No. 1 thereto prior to the filing of the complaint, and except the Chicago, Milwaukee & St. Paul Railway Company of Washington, which is not now operating, but is building, and, therefore, not a party to either of these tariffs. There is no testimony to show the existence of the latter company, and the complaint should be dismissed as to it.

The complaint alleges that the rates now in effect under the tariffs named are unjust and unreasonable; that while the rates in effect prior to Novembr 1, 1907, were reasonable and just from Pacific coast points, the complainants were and are entitled to lower rates from their shipping points, the Inland Empire, or Spokane district, than should apply to shipments from the Pacific coast, and should have a greater differential under such coast points than was in force formerly. There is also an allegation of unreasonableness in the present tariffs in that they create a difference in rates to the Minnesota Transfer and to Missouri River common points. In other

words, so far as the complainants are concerned, they allege the justice and reasonableness of the rates in effect prior to November 1, 1907, from Pacific coast points and ask for a differential of at least 10 cents per 100 pounds under such rates, to apply to shipments east bound from Spokane district.

This case is dependent upon the Pacific Coast Lumber cases, Nos. 1327, 1329, and 1335, in that the reports and orders of this commission therein must control its disposition so far as the basing rates are concerned. This relationship between the cases was recognized in the hearings, by the stipulations of counsel, by the intervener, and, most of all, by the direction of the testimony toward the subject of what differential under the coast rates should apply in favor of Spokane. The commission having decided the cases involving the coast rates, the only matter left for consideration in this
96 case is the question of what differential, if any, Spokane should have under the rates from the Pacific coast.

No reparation is asked in this case.

The Spokane group or district, as established in the tariffs complained of, embraces a large number of shipping points and was created by the rail carriers for their own convenience and for that of the shipping public. It extends westward from Spokane on the Northern Pacific by one line 232 miles to Yakima City and by another line 142 miles to Adrian. The evidence indicates, however, that no lumber is produced between Yakima City on the one hand or Adrian on the other and Spokane, the country traversed by these lines of the Northern Pacific being a farming region largely devoted to wheat raising and fruit culture. North of Spokane, on the lines of the Great Northern, the group rates extend to and beyond the British Columbian boundary at Port Hill and Rykerts and as far east as Leonia, Idaho. To the east, along the lines of the Northern Pacific and the Oregon Railroad & Navigation Company, Spokane rates apply as far as Evaro, Mont., a distance of 240 miles. Southward, along the lines of the Oregon Railroad & Navigation Company and the Northern Pacific, the group embraces Wallula, Pendleton, Dayton, Lewiston, Cul de Sac, and Stites, the extreme distances being about 200 miles.

This grouping was made primarily for transportation reasons, but the result follows certain natural lines. The territory is mainly west of the Rocky Mountains and is entirely east of the eastern slope of the Cascade Range; it extends from the international boundary on the forty-ninth degree of latitude as far south as the forty-sixth degree; and, with the exception of the included timberless farming country stretching westward from Spokane to the foothills of the Cascade Range, the district produces chiefly what is known as western pine. Throughout this territory the Spokane rate applies on forest products, with certain arbitraries added along the line of the Spokane Falls and Northern Railroad. The present Spokane district embraces the old Spokane rate group and also stations formerly

taking the rates from Sand Point, 70 miles east, and other basing points.

West of this district there is another group of rates applying to the timbered district of the eastern slope of the Cascade Range. This group takes a differential over Spokane and embraces Leavenworth on the Great Northern Railway, all stations from Cleelum to North Yakima on the Northern Pacific, and the Hood River country from Wyeth to The Dalles on the line of the Oregon Railroad & Navigation Company. As before stated, this territory now has its rates based upon the Spokane rate and carries a differential of 2½ cents additional thereto. Heppner, on a branch line of the
97 O. R. & N., though not geographically within this group, is, for reasons of transportation, properly included therein.

South of the Spokane group along the lines of the Oregon Railroad & Navigation Company and of the Oregon Short Line, extending from Meacham and Elgin on the former to Nampa and Boise City on the latter, and east of the Spokane group along the lines of the Great Northern from Marion and Whitefish to Midvale and along the lines of the Northern Pacific from De Smet, Darby, and Phillipsburg to Drummond, the respective stations are grouped under what is known as the Montana-Oregon rate.

The Spokane group as above outlined is changed from what it was under the tariffs in force prior to November 1, 1907, in that it covers a much wider territory and embraces points formerly taking a lower rate than Spokane. The differentials under the coast rates applying from this group to the various points of destination are also changed. By the former tariff Spokane territory had a differential to Omaha of 5 cents as against the coast, but there was no differential in its favor to St. Paul, Chicago, Kansas City, St. Louis, or Denver. Now the differential to each of these basing points is 5 cents.

The following tables, filed in behalf of the defendants, will illustrate some of the changes in differentials under the old and new tariffs:

Statement showing differentials, old and new, on fir lumber from coast district and pine lumber from Spokane district to points in Minnesota and northern Dakota on Northern Pacific Railway.

	From Spokane under coast rates.		From Montana under Spokane rates.	
	Old.	New.	Old.	New.
All stations in Minnesota	None	5	None	None in some cases; 2c. in others.
All stations in North Dakota between Haggert and Oriska, inclusive; all points on Casselton Branch, Casselton to Marion; all points on Fargo and Southwestern Branch, Cotters to Streeter; all points on the Cooperstown Branch, Sanborn to McHenry; all points on Oakes Branch, Stevenson to Oakes.	None	5	None	None in some cases; 2c. in others.

Statement showing differentials, old and new, on fir lumber from coast district and pine lumber from Spokane district, etc.—Continued.

	From Spokane under coast rates.		From Montana under Spokane rates.	
	Old.	New.	Old.	New.
All points on Jamestown and Northern Branch, Jamestown to Leeds, inclusive.	None in some cases; 5c. in some; 4c. in others.	6½ & 7½	None in some cases; 5c. in cases 5c. in some; 4c. in others.	None in some cases; 3c. and 4c.
Valley City	None in some cases; 2c. in some and 4c. others.	5	None in some cases; 2c. in some; 1½c. in others.	None in some cases; 2c. in others.
Points between Eldridge and Steele, inclusive.	None in some cases; 5c. in some; 4c. in others.	6½ & 7½	None in some; 5c. in some; 4c. in others.	None in some and 2c. in others.
Points between Geneva and Apple Creek, inclusive.	None in some; 5½ in some; 4½ in others.	6½, 7, 7½	None in some; 5½c. in some; 4½c. in some.	1, 2, 3, and 4c.
Linton	None in some cases; 5½c. in some, and 4½ in others.	5	None in some; 5½c. in some; 4½c. in others.	2c.
Bismarck	None in some; 5½c. in some; 4½ in others.	6½ & 7½	None in some; 5½c. in some; 4½c. in others.	1, 4, and 5c.
From Mandan to Sully Springs, inclusive.	None in some; 6, 5½, and 4½ in others.	7½ & 8½	None in some; 6, 5½, 5, and 4½c. in others.	1, 3, and 4c.

98 *Statement showing differentials, old and new, on fir lumber from coast district, pine lumber from Spokane district (Spokane to Idaho-Montana line), to points every 50 miles on Great Northern Railway, Montana-North Dakota line, to Minneapolis, also branch lines in North and South Dakota.*

SPOKANE DISTRICT.

	Under coast rates.	
	Old.	New.
Buford, N. Dak	None to 7 cents	5 cents to 8 cents.
Ray, N. Dak	None to 6½ cents	7½ cents to 8½ cents.
Palermo, N. Dak	None to 6 cents	Do.
Surrey, N. Dak	None to 5½ cents	Do.
Tunbridge, N. Dak	do	7 cents to 8 cents.
Penn, N. Dak	None to 4½ cents	6½ cents to 7½ cents.
Petersburg, N. Dak	None to 1 cent	6 cents to 7 cents.
Portland Junction, N. Dak	None	5 cents.
Everest, N. Dak	do	Do.
Wahpeton, N. Dak	do	Do.
Donnelly, Minn	do	Do.
Murdock, Minn	do	Do.
Darwin, Minn	do	Do.
Minneapolis, Minn	do	Do.

BRANCHES IN NORTH DAKOTA.

Sherwood, N. Dak	None to 3½ cents	7½ cents to 8½ cents.
Maxbass, N. Dak	None to 4½ cents	Do.
Antler, N. Dak	None to 4 cents	7 cents to 8 cents.
Dunseith, N. Dak	None to 3½ cents	Do.
St. John, N. Dak	None to 4½ cents	6 cents to 7 cents.
Sarles, N. Dak	None	5½ cents to 6½ cents.
Hannah, N. Dak	do	5 cents to 5½ cents.
Walhalla, N. Dak	do	5 cents.
Neche, N. Dak	do	Do.
Forbes, N. Dak	do	Do.

BRANCHES IN SOUTH DAKOTA.

Aberdeen, S. Dak	None	5 cents.
Huron, S. Dak	do	Do.
Yankton, S. Dak	5 cents	Do.

These tables are to be read with this explanation: They apply to the present Spokane grouping of shipping points, which embraces the former Spokane district and also others, including the group formerly known as the Sand Point district. In both tables in the columns showing the differentials applying by the old tariffs to the Spokane district under the coast rates the word "None" from Sully Springs, N. Dak., on the west, to all stations in Minnesota, on the east, on the lines of the Northern Pacific Railway, and the same word from Buford, N. Dak., to Minneapolis, Minn., on the line of the Great Northern Railway, applies strictly to the differential allowed the old Spokane group under the tariffs in force prior
99 to November 1, 1907. There was no differential in favor of Spokane from the western boundary of North Dakota to and including Minnesota Transfer. The differentials shown in these tables as applying by the old tariffs to the present Spokane district actually applied to Sand Point and other stations which are now included with Spokane in the new grouping.

From the above it will be seen that the defendant carriers have by their own voluntary actions admitted the propriety, not only of a group or blanket, for the purpose of rate making from the Spokane-Sand Point district, but also that some differential under the coast should be allowed to that group. The complainants, however, contend that a much greater differential should be allowed to Spokane than has ever obtained. Their petition asks for a differential of 10 cents under the coast, and the testimony and briefs in their behalf are directed to even a higher differential than that. Their claims in this regard are based upon (a) the distance, (b) the mountain grades to the summit of the Cascades, and (c) the wide treeless farming section, all to be traversed from the coast before the timber of the Spokane district is reached. To these reasonable transportation bases for a differential are added matters of persuasion and inducement that essentially pertain to economics and to the position of the complainants with respect to the quality of their product and the possibilities of commercial competition. They allege and prove that their lumber is inferior to that produced on the coast; that the standing timber is smaller, more knotty, and requires greater care and cost to mill and market than does the fir of the coast or the yellow pine of the South; and that as their finished product is 93 per cent common lumber, only 7 per cent being upper or better than common, they can never meet sharp competition anywhere outside of the treeless States of the Central West, where no common lumber is produced locally.

In the view we take of this case it is not necessary to consider at length when and under what circumstances these matters might or might not be of weight in determining the reasonableness of a rate or the desirability of a differential. As we have heretofore held, there are many matters that may properly be considered by a carrier in fixing a rate which will give competition in certain territories and for certain commodities when acting of its own motion, which, never-

theless, would not be sufficient to justify this commission in fixing such rate for the carrier.

Two facts stand out as beacon lights in the sea of testimony produced in this case: One is that the lumbermen of the Spokane district prospered under the old rates, though their product was inferior; the other is that the carriers by the tariffs complained of, as well as in part by the old tariffs, have admitted in part the propriety of a differential in favor of the Spokane district, as grouped in the new tariffs and in part in the old, as against the coast.

100 A careful examination of the testimony as a whole makes it plain that a differential in favor of Spokane and the Spokane district under the rates from the coast should exist, but there is great difficulty in determining just what the amount of that differential should be, and from what shipping and to what destination points it should apply. The same is true of the district bordering the eastern slope of the Cascade Range. If, however, the tables hereinbefore set out are referred to, it will be apparent that even under the old tariffs differentials under the coast were allowed from some shipping points in the present Spokane-Sand Point district to certain destination points, the grading being from nothing in Minnesota to 6 cents on the line of the Northern Pacific between Mandan and Sully Springs, inclusive, in North Dakota; and along the line of the Great Northern from nothing in Minnesota to from 1 cent at Petersburg to 7 cents at Buford, N. Dak. To the old Spokane district proper no differential under the coast was allowed. Under the new tariffs, along the lines of the Great Northern and Northern Pacific the differentials from the present Spokane-Sand Point district under coast rates are 5 cents in Minnesota, and from 5 cents to 8½ cents in North Dakota. By these same new tariffs the rates from the Montana-Oregon group to various common destination points are from nothing to 5 cents under the Spokane rates, the basing of the Montana-Oregon group being, however, directly under the coast rates, and not under the Spokane rates. The rates from the eastern slope of the Cascade Range are 2½ cents higher than the Spokane rates in all cases, this differential being apparently an intermediate or half step between the coast and the Spokane rates. These facts, though not conclusive of the grouping that should be made under a practical restoration of the tariffs in effect prior to November 1, 1907, are strongly persuasive that some changes in the former groupings should be made.

From the summit of the Cascade Range westward to the coast the timber is fir of magnificent proportions; on the eastern slope of these mountains the timber is sparser, smaller, and is a mixture of fir and western pine; in the Spokane district the timber is distinctly of lower grade and consists of about 50 per cent western pine, 10 per cent white pine, and 40 per cent of other woods valued even less highly than western pine; the districts taking the Montana-Oregon basis have a timber somewhat like the Spokane district. These facts are relied upon by the complainants as inducements to the estab-

lishment of a very high differential in favor of Spokane, and on behalf of the interveners and of the defendants much is made of the inducement contra to the effect that, due to the fact that coast lumber is generally shipped green and western pine (Spokane) lumber is always shipped dry, there is a natural differential in the weights of lumber from the coast and from Spokane equal to 500
101 pounds per 1,000 feet in favor of Spokane, and that therefore there should be no money differential in the rates. If, however, these matters should be taken into consideration, the added cost to the Spokane district of drying its lumber should also be remembered, as well as the fact that at points at present somewhat inaccessible there are as yet untouched noticeable bodies of white pine in the Spokane district. Notwithstanding all this, the natural advantages or disadvantages of the various timber sections represented in this case, and the problems facing them in competition with each other, were assumed by the respective manufacturers when they engaged in the business, prior to the time the present tariffs became effective; they are not necessarily determinative of the question of what differentials should apply to the Spokane district or to the district on the eastern slope of the Cascade Range. For the purposes of this case it is sufficient that the defendant carriers by their own acts in establishing the various tariffs, old and new, have made admissions, in the nature of estoppels in pais, that parts of the Spokane district, as grouped since November 1, 1907, should have a differential under the rates from the coast, and that an intermediate differential should apply to the eastern slope of the Cascade Range—the two districts being separated by a natural barrier of farming country.

The reports and orders in cases No. 1327, Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. Co. et al.; No. 1329, Pacific Coast Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et. al.; No. 1335, Southwest Washington Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et al., decided concurrently herewith, necessarily control the disposition of this case. In view of the physical facts, emphasized in the record of this case, that Spokane is separated from the Pacific coast by a rail distance little short of 400 miles by the routes actually used; that in most of these routes the haul from the coast necessarily crosses the Cascade Range; that for something like 200 miles east of the Cascades the country is a treeless farming region until the immediate vicinity of Spokane is reached, the commission's conclusions are that the rates on interstate shipments of lumber, shingles, and other forest products from the groups hereafter named to points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Texas, along the Kansas City Southern Railway, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and

102 Kansas City, Mo., should be less than the rates on similar shipments from the "Coast rates" group as follows:

Rates from the group points east of the summit of the Cascade Mountains, and west of the present "Spokane rates" group, to points on and west of said line from Pembina, N. Dak., to Port Arthur, Tex., including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., should be less than the rates prescribed by the commission in cases Nos. 1327, 1329, and 1335 from the "Coast rates" group by differentials beginning at not less than 2 cents per 100 pounds and graded up westwardly therefrom (a) to a differential of not less than 6 cents per 100 pounds at Buford, N. Dak., on the line of the Great Northern Railway; (b) to a differential of not less than 6 cents per 100 pounds at Medora, N. Dak., on the line of the Northern Pacific Railway; (c) to a differential of not less than 6 cents per 100 pounds at Edgemont, S. Dak., on the line of the Chicago, Burlington & Quincy Railroad; (d) to a differential of not less than 6 cents per 100 pounds at Cheyenne, Wyo., on the line of the Union Pacific Railroad; (e) and to a differential of not less than 6 cents per 100 pounds at Denver, Colo., on the line of the Union Pacific Railroad.

Rates from the present "Spokane rates" group and from the present "Montana-Oregon" rates group to points on and west of said line, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., should be less than the "Coast rates" as prescribed in the cases specified, by differentials beginning at not less than 3 cents per 100 pounds and graded up westwardly therefrom to a differential of not less than 7 cents per 100 pounds at Buford, N. Dak.; Medora, N. Dak.; Edgemont, S. Dak.; Cheyenne, Wyo.; and Denver, Colo., as described in the preceding paragraph.

Rates from the group of points east of the summit of the Cascade Mountains, and west of the present "Spokane rates" groups, to points east of said line, Pembina-Port Arthur, and excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., should be less than the "Coast rates," as prescribed in the cases specified, by a differential of not less than 2 cents per 100 pounds, up to and including Duluth, Minneapolis, St. Paul and Minnesota Transfer, and from the Missouri River crossings to the Mississippi River crossings.

Rates from the said "Spokane rates" group and the "Montana-Oregon" rates group, as they now exist, to points east of said
103 line and excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., should be less than the "Coast rates," as prescribed in the cases specified, by a differential of not less than 3 cents per 100 pounds, up to and including Duluth,

Minneapolis, St. Paul and Minnesota Transfer, and from the Missouri River crossings to the Mississippi River crossings.

These differentials should not be construed or understood to conflict with the rates prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al.

The groups referred to in these conclusions and in the accompanying order as the "Spokane rates" group and the "Montana-Oregon" rates group are the groups, or rating territories, created by the carriers in T. C. F. B., I. C. C. No. 850, and Great Northern I. C. C. No. A–2667, both effective November 1, 1907; the groupings named are not those in effect prior to that date. The group of points referred to in these conclusions as east of the summit of the Cascade Mountains and west of the present "Spokane rates" group is intended to embrace the points grouped in the tariffs named and including the Hood River, Ellensburg, and Leavenworth districts.

An order will be made in accordance with these conclusions, and this report should be read in connection with with the commission's reports and others in the cases hereinbefore specified.

Knapp, chairman, and Harlan, commissioner, dissent on the general grounds stated in their dissenting opinion in Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. Co. et al., No. 1327, supra.

(Endorsed:) Filed Decembr 16th, 1908. Henry D. Lang, clerk.

104 Thereafter and on Jany. 4th, 1909, the following præcipe for order setting demurrer down for hearing was filed in said cause, and the following order entered thereon, viz:

105 Circuit Court of the United States, District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Præcipe for order setting down demurrer for hearing.

To the clerk of the above named court:

Please enter order setting down demurrer of defendant for hearing at next rule day.

JAMES B. KERR,
HALE HOLDEN,
F. C. DILLARD,
W. W. COTTON,
Solicitors for Complainants.

(Endorsed:) Præcipe for order setting demurrer down for February rules. Order entered T. M. vol. 39, page 91. Filed January 4th, 1909. Henry D. Lang, clerk.

106 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes, June term, A. D. 1908. January 4th, 1908: Monday morning. Court opened pursuant to adjournment. Present: Hon. Milton D. Purdy, judge; Henry D. Lang, clerk.

* * * * * * *

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* INTERSTATE COMMERCE COMMISSION. } Equity No. 885.

Pursuant to a præcipe this day filed herein signed by the solicitors for the complainants, it is by the court ordered that the demurrer of defendant be and the same hereby is set down for hearing at the next rule day, to-wit: February 1st, A. D. 1909 at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard.

* * * * * * *

A true record.
Attest:

HENRY D. LANG, *Clerk.*

Thereafter and on the same day the following replication was filed in said cause, to-wit:

107 In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY CO. ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant. } In Equity No. —.

Replication.

These repliants saving and reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant for replication thereunto saith that they do and will aver, maintain, and prove their said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court

shall direct, and humbly prays as in and by their said bill they hath already prayed.

JAMES B. KERR,
HALE HOLDEN,
W. W. COTTON,
F. C. DILLARD,
Solicitors for Complainants.

(Endorsed:) Replication. Filed January 4th, 1909. Henry D. Lang, clerk.

108 Thereafter and on January 5th, 1910, the following stipulation as to record for submission to master, etc., was filed in said cause, to wit:

109 DECEMBER 4, 1909.

Union Pacific R. R. Co. et al. *v.* Interstate Commerce Commission.
In Equity. No. 883.

Northern Pacific Ry. Co. et al. *v.* Interstate Commerce Commission.
In Equity. No. 884.

Great Northern Ry. Co. et al. *v.* Interstate Commerce Commission.
In Equity. No. 885.

Stipulation.

In addition to the stipulation entered into at St. Paul concerning the printing of the record in the cases before the Interstate Commerce Commission, the following supplementary agreement, subject to the objections heretofore made as to the admissibility of testimony, is hereby entered into between counsel for the respective parties, as follows, to wit:

1. The printed abstract of the oral testimony fairly presents the substance of all that character of testimony offered before the Interstate Commerce Commission on the hearing before it of these cases, and the printed abstract fairly presents the selected exhibits or the substance thereof presented to said commission on said hearing.

2. The other exhibits presented on the hearing aforesaid or reports and documents on file with the commission or referred to on the hearing before said commission in said cases may be considered by the master and used by either party hereto on the hearing before him without the printing thereof.

3. Either of the parties hereto may print and file with the master or the court such portions thereof as counsel may deem material, but if the same be not printed for the hearing before the master no rights

to use the same as evidence or rights to print the same for the use of the court thereafter are waived.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.
LUTHER M. WALTER,
JOSEPH N. TEAL,
WILLIAM A. WIMBISH,
Solicitors for Defendant.

(Endorsed:) Stipulation as to record for submission to master, &c. Filed Jan. 5, 1910. Henry D. Lang, Clerk.

110 Thereafter and on January 11th, 1909, the following instructions of court in relation to hearing upon demurrer was filed in said cause, to wit:

111 ST. LOUIS, MISSOURI, *January 9, 1909.*

Hon. HENRY D. LANG,
Clerk, U. S. Circuit Court, St. Paul, Minnesota.

DEAR SIR: Regarding the three cases, Nos. 883, 884, and 885, the railroad cases against the Interstate Commerce Commission pending in St. Paul in which demurrers have been interposed, you may notify the lawyers that the circuit judges will be in St. Louis until the first of April; that during April they will be separated, and that they will be in St. Paul during the session of the Court of Appeals in May. The cases may be heard at St. Paul at some convenient time after May 1st, or they may be heard at St. Louis at some convenient time prior to April 1st, if they desire to urge their hearing at so early a date. Personally I should prefer to have them heard at St. Paul, but the judges will accommodate the lawyers as to the time of hearing. Before fixing upon the time, however, we should like notice of the time desired, because some of the judges are liable to be out of the city here unless we agree upon the time.

Yours, truly,

WALTER H. SANBORN,
U. S. Circuit Judge.

(Endorsed:) Instructions of court in relation to hearing upon demurrer. January 11th, 1909. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

112 Thereafter and on February 15th, 1909, the following order appointing F. N. Dickson special master was filed and entered in said cause, to-wit:

113 In the Circuit of the United States for the district of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Come now the parties, the complainants by F. C. Dillard, Esq., and the defendant by Luther M. Walter, Esq., and after due consideration,

It is hereby ordered that Frederick N. Dickson, Esq., of St. Paul, Minnesota, be, and he is hereby appointed special master in chancery in this case.

The special master hereby appointed is empowered and directed to take and report to the court the evidence in this cause; to examine the same; to make the necessary computations; to find and state the facts in this case and to report advisory conclusions of law and recommend a proper form of decree herein.

It is further ordered that upon the completion of his report, the special master shall notify counsel for the respective parties thereof and shall exhibit said report to them or deliver to them copies thereof, that each of the parties to this suit may thereupon file exceptions to the report with the master within thirty days after its exhibition or delivery to their counsel and the master shall thereupon consider and sustain or overrule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings thereon, the evidence and any modifications of or additions to his report he may deem it just and proper to make in view of the exceptions.

Upon the filing of such report and exceptions, this cause shall stand for hearing before the court upon said exceptions as
114 though they had been made at the time specified in Rule 83 in Equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainants shall take their evidence is fixed and limited to sixty days from the date hereof; that the time within which the defendant shall take their evidence in defense is fixed and limited to forty-five days thereafter and the time within which the complainants shall take their evidence in rebuttal is fixed and limited to thirty days thereafter.

February 13, A. D. 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order appointing F. N. Dickson special master. Entered Term Minutes Volume 29 page 159. Filed February 15th, 1909. Henry D. Lang, Clerk. By, Louise B. Trott, Deputy.

Thereafter and on February 16th the following oath of Frederick N. Dickson was filed and entered in said cause, to-wit:

115 United States Circuit Court. District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

I, Frederick N. Dickson, do solemnly swear that I will support the Constitution of the United States, and faithfully, impartially, and to

the best of my ability perform my duties as special master in chancery in the above entitled cause, so help me God.

FREDERICK N. DICKSON.

Subscribed and sworn to before me this 16th day of February, A. D. 1909.

[SEAL OF COURT.]

LOUISE B. TROTT,
Deputy Clerk, U. S. Circuit Court
for the District of Minnesota.

(Endorsed:) Oath of Frederick N. Dickson, special master. Entered Miscellaneous Records, vol. 1, page 180. Filed February 16th, 1909. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Thereafter and on February 16th, 1909, the following stipulation postponing demurrer was filed in said cause, to-wit:

116 In the Circuit Court for the United States for the District of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL.,
complainants,
vs.
INTERSTATE COMMERCE COMMISSION.

In this cause it is stipulated and agreed that the demurrers may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier day.

HALE HOLDEN,
F. C. DILLARD,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

FEBRUARY 3RD, 1909.

(Endorsed:) Stipulation postponing demurrer. Filed February 16th, 1909. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Thereafter and on the same day the following order postponing the hearing on demurrer was entered in said cause, to-wit:

117 United States Circuit Court. District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.,
complainants,
vs.
INTERSTATE COMMERCE COMMISSION,
defendant.

In accordance with a stipulation to that effect signed by the solicitors for the respective parties and filed herein, it is by the court

ordered that the demurrer may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier date.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order postponing hearing on demurrer. Entered T. M., vol. 39, page 164. Filed February 16th, 1909. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Thereafter and on March 15th, 1909, the following order appointing Robert S. Taylor stenographer was filed and entered in said cause, to-wit:

118 In the Circuit Court of the United States for the District of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION.

It is hereby ordered, that Robert S. Taylor be, and he is hereby, appointed stenographer, empowered and directed to take and report, under the direction and orders of Honorable Frederick N. Dickson, the special master herein, the evidence that may be offered in the case above entitled.

WALTER H. SANBORN,
Circuit Judge.

ST. LOUIS, MO., *March 15, 1909.*

(Endorsed:) Order appointing Robert S. Taylor, stenographer. Entered T. M. Vol. 39, page 202. Filed March 15th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on April 15th, 1909, the following stipulation extending complainants' time to take testimony to May 15th, 1909, was filed in said cause, to-wit:

119 Circuit Court of the United States for the District of Minnesota. Third Division.

GREAT NORTHERN RALWAY COMPANY ET AL., complainants,
vs.
THE INTERSTATE COMMERCE COMMISSION, defendant.
In Equity, No. 885.

Stipulation.

It is hereby stipulated and agreed by counsel for the respective parties that the time for taking complainants' evidence may be ex-

tended until May 15, 1909, and that on or before that day or immediately thereafter the time may by order of court be fixed for the taking of evidence in behalf of the defendant, as well as time thereafter if desired, for taking evidence by complainants in rebuttal.

Dated this 15th day of April, 1909.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation extending complainants time to take testimony to May 15, 1909. Filed April 15, 1909. Henry D. Lang, clerk.

Thereafter and on the same day the following order extending time to take complainants' testimony was filed and entered in said cause, to wit:

120 Circuit Court of the United States for the District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity No. 885.

Order.

Upon reading the stipulation filed in this cause this day, duly signed by counsel for the parties hereto, it is ordered:

That the time heretofore granted to complainants for taking testimony in this cause be extended until May 15, 1909; that defendant may on or before said date or immediately thereafter apply to the court by stipulation or otherwise, for the fixing of a date for the taking of its testimony herein, at which time an order will be entered for that purpose, and also setting a time for taking by complainants of testimony in rebuttal after the completion of defendant's testimony so to be provided for.

In other respects the order heretofore made touching the taking of testimony and the report of the master appointed herein shall remain as provided for in the original order.

Dated April 15, 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order extending time to take complainants' testimony. Entered T. M. vol. 39, page 259. Filed April 23rd, 1909. Henry D. Lang, clerk.

121 Thereafter and on March 11th, 1910, the following stipulation to tax costs of H. Lee, crier, Chicago, was filed in said cause, to wit:

122 In the Circuit Court of the United States for the District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} In Equity No. 885.

Stipulation to tax costs.

It is agreed that the clerk shall tax in this cause the sum of $2.50 per day for eight days, in favor of H. Lee, court crier, as compensation to him for attendance at the argument of this cause before special master, in the city of Chicago, February 8th to 16th, inclusive. These costs to be adjudged against the losing party in this cause in the final event of the action.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Attorneys for Complainants.
LUTHER M. WALTER,
J. N. TEAL,
W. A. WIMBISH,
Attorneys for Defendant.

Dated at Chicago, Illinois. March 8th, 1910.

(Endorsed:) Stipulation to tax costs of H. Lee, court crier. Filed Mar. 11, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on July 30th, 1910, the following stipulation to modify order and order were filed and entered in said cause, to wit:

123 In the Circuit Court of the United States. District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants.
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.
} In Equity. No. 885.

Stipulation.

It is hereby stipulated and agreed that the order entered herein on February 15, 1909, shall be modified and that either party hereto shall file its exceptions to the master's report on or before August 19, 1910, and that an order may be entered herein setting down said exceptions for hearing before the master, in the city of St. Paul, in August 19, 1910; that said order may provide that the master

shall pass upon said exceptions and file his report, said exceptions, a report of his action thereon, and all other matters contemplated by the order of February 15, 1909, in the clerk's office, on or before August 27, 1910; that said order shall provide that either party hereto shall file such additional exceptions as may be desired in the clerk's office on or before September 10, 1910, and that this cause be set down for hearing before the circuit judges at the city of St. Paul on September 15, 1910.

HALE HOLDEN,
Solicitor for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

Dated this 27th day of July, 1910.

(Endorsed:) Stipulation to modify order. Filed July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

124 In the Circuit Court of the United States. For the District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants. *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	In Equity. No. 885.

Order.

Upon reading the stipulation dated July 27, 1910, of the parties hereto, duly filed herein, and upon due consideration thereof.

It is ordered that the order heretofore entered on February 15, 1909, appointing Honorable Frederick N. Dickson, as special master, and defining his duties touching the making of a report, hearing exceptions thereon and filling his said report, exceptions, and rulings thereon in the office of the clerk in this court, be, and the same is hereby, modified; and it appearing that the special master did on July 22, 1910, deliver a copy of his report to each of the parties hereto, in lieu of the provisions of said order.

It is ordered that either party hereto shall file its exceptions, if any, to the master's report with him on or before August 19, 1910, and that on that day, at the city of St. Paul, the special master shall hear arguments upon any exceptions so filed and presented to him to his report; that on August 27, 1910, the special master shall file with the clerk of this court his report, any exceptions thereto filed with him as aforesaid, a statement of his action and rulings thereon, together with a form of decree recommended by him to be entered in this cause.

It is further , in accordance with the stipulation as aforesaid, that either party hereto shall file with the clerk in this court

125 on or before September 10, 1910, such further exceptions as may be taken, and that this cause be, and the same is hereby, set down for hearing before the circuit judges of this circuit, in the United States court room, at the city of St. Paul, Minnesota, on September 15, 1910, upon the master's report and the exceptions thereto, including those exceptions filed with him as aforesaid, and such additional exceptions as may be filed in the clerk's office, as provided for in this order.

WILLIS VAN DEVANTER,
United States Circuit Judge.

Dated this 30th day of July, 1910.

(Endorsed:) Order. Entered T. M. vo. 42, page 118 and 119. Filed, July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on August 27th, 1910, the master's report was filed in said cause, to wit:

126 In the Circuit court of the United States for the District of Minnesota. Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILROAD COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, OREGON RAILROAD & NAVIGATION COMPANY, AND SOUTHERN PACIFIC COMPANY, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

Master's report.

These three suits were begun by the carriers parties complainant hereto to enjoin the enforcement of certain orders of
127 the Interstate Commerce Commission prescribing maximum rates for the future transportation of lumber in carload lots from points on the Pacific coast to points in various States and Territories east and southeast of the points of origin. In the case of No. 883, called the Union Pacific case, an inju'ction is sought against an order made by the commission in its docket No. 1327, upon a complaint brought by the Oregon and Washington Lumber Manufacturers Association and others against the Union Pacific Railroad Company and others. The complaint alleged that an advance in the rates on lumber and other forest products established by the defendants and other participating carriers from points in Oregon, Washington, Idaho, Montana, and British Columbia to points in other States therein set forth were unreasonable. The rates prescribed by the commission were the same as those in effect immediately prior to November 1, 1907, except that the rates to all points on and east of a line drawn from Pembina, North Dakota, south to Port Arthur, Texas, subject to minor exceptions, might be increased not to exceed 5 cents per one hundred pounds.

In the case of No. 884, called the Northern Pacific case, the bill attacks an order of the commission made in its docket No. 1329 and No. 1335, upon complaints filed by the Pacific Coast Lumber Manufacturers Association and the Southwest Washington Lumber Manufacturers Association, respectively. Those complaints attack the reasonableness of defendant's rates substantially as complained of in the Union Pacific case, docket No. 1327.

In the case of No. 885, called the Great Northern case, the bill attacks an order prescribing rates for the future on lumber and forest products made in its docket No. 1348, upon complaint of the Potlatch Lumber Company and others. The rates attacked
128 had been advanced on November 1, 1907, and applied from points of origin in the States of Washington, Oregon, and

Idaho, east of the Cascade Mountains commonly known as interior points. The points of destination were in States south and east of the States in which were the points of origin. In this case the commission established rates to the various points of destination referred to in numbers 1327, 1329, and 1335, lower than the coast rates group by differentials beginning at not less than 2 cents per one hundred pounds and graded up to not less than 6 cents per one hundred pounds from the group west of Spokane. From the Spokane group the differentials graded from 3 cents to 7 cents per one hundred pounds.

All these orders were effective August 15, 1908, but were later extended by order of the commission so as to become effective October 15, 1908. The rates so prescribed by the commission are now and have been continuously in effect since said latter date and they expire by limitation of the statute on October 15, 1910.

These three cases were all referred to the master to hear and report findings of facts and recommendations for a decree and were tried together.

It is conceded that all technical requirements of the statute necessary to properly bring the matter before the Interstate Commerce Commission and to confer on the commission authority to determine and prescribe rates have been complied with. The bills allege in substance that in making the various orders the commission acted without warrant of law in that the act to regulate commerce as amended by the so-called Hepburn bill of June 29, 1906, is unconstitutional and void because it confers upon the commission executive, legislative, and judicial powers; and for the further reasons that the rates prescribed by the carriers and which the commission reduced were low, just, and reasonable, and that the rates prescribed
129 by the commission in lieu thereof were and will be for more than three years from the date of the filing of the bills unjust and inadequate compensation for the service rendered; that the making of the orders complained of was pro tanto depriving the complainants of their property without due process of law in violation of the 5th and 14th amendments of the Federal Constitution; that sections 15 and 16 of the act to regulate commerce in so far as they make the orders of the commission effective of their own force prior to a hearing in a court of justice upon the question of the reasonableness of the rates prescribed in said orders, are void as being in conflict with the Federal Constitution, which provides that all judicial power is vested in the courts of the United States; that section 16 of the act to regulate commerce is void for the additional reason that it prescribes that the carrier failing to comply with an order of the commission shall forfeit to the United States the sum of $5,000.00 for each day said carrier fails to obey said order, notwithstanding that the question of the unreasonableness of the rates has not been judicially investigated in any court of law and that it deprives complainants of their property without due process of law,

contrary to Article Five of the amendments to the Constitution of the United States.

The bills further allege that upon the hearings of the case before the commission no evidence was considered or offered which in any wise showed, or tended to show, that the rates complained of were excessive, unjust, or unreasonable, and that the commission entered the orders complained of without any justification in fact therefor and without any evidence or finding of fact that said rates fixed by the defendants before the commission were excessive, unjust, and unreasonable; that the circumstances and conditions surrounding the transportation of lumber existing on November 1, 1907, were
130 wholly different from those existing at the time when the rates in effect prior to said date were made; that the commission held as a matter of law that the continuance of such rates raised a presumption that the higher rates were unjust and unreasonable; that in such holding the commission acted erroneously, through a mistake and misapprehension of the law and without authority; that the rates so fixed by the commission are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation and bear no just or fair relation to the rates on through traffic moving over the complainants' lines, and that the rates prescribed by the commission will impose an undue and unreasonable burden, not only upon the complainants but upon the shippers of other commodities.

The complaints further alleged "that the rates so fixed by said order are unreasonable and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the States of Washington, Oregon, Montana, and Idaho to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order, and your orators upon information and belief aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on through traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden, not only upon your orators, but upon the shippers of other commodities."

131 This is the only allegation of confiscation contained in the bills.

To these bills the commission filed a demurrer and answer, the demurrer applying to those allegations of the bill which set forth that certain portions of the act to regulate commerce are unconstitutional, and by stipulation the questions raised by these demurrers are reserved for the court's decision, and with those questions the master has nothing to do.

In its answer the commission denies that the rates in effect and complained of before the commission were either unreasonable or unjust and will so continue to be. The answer sets forth the position of the commission with reference to the extent of the review which the court should exercise over the action of the commission, namely, that the court should not make any inquiry with reference to whether the rates prescribed by the commission are just and reasonable, except within the constitutional guaranty in the fifth amendment which prohibits the taking of private property without just compensation and due process of law. The answer alleges that the rates prescribed by the commission will afford just compensation for the service rendered and that the orders were made in due process of law. It is further alleged that the court should not hear and determine these cases upon any state of facts which were within the knowledge of the complainants and which they failed or neglected to present to the commission at the time of the hearings, nor upon any facts which may have arisen since said hearings, except such facts be first presented by an application for rehearing or otherwise to the commission. It is further alleged that the mere allegation that the rates of transportation prescribed by the defendant will not afford a fair compensation or will entail a loss or will be unremunerative ought not to be
132 considered, because such allegations are statements of conclusions or opinions of interested parties and do not have coupled therewith any statements of facts from which the reasonableness of a rate can be determined. It is further alleged that the commission is vested with the exclusive power of determining what are just and reasonable rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry leading to an independent conclusion except such as may be necessary to protect the constitutional rights of complainants. The answer denies that the defendant made the orders complained of without any evidence that the rates complained of were in violation of the act to regulate commerce; and avers on the contrary that the orders were made after a full inquiry and due investigation which disclosed facts compelling the orders made by the commission.

There seems to be a sharp controversy between complainants and defendants as to the scope of the inquiry to be entertained by a Federal court in reviewing an order of the Interstate Commerce Commission which fixes and prescribes rates for the future. The complainants claim as follows: "The questions involved in all three suits are, however, practically identical, being simply the question whether the rates as advanced were unreasonable and whether the rates the commission put into effect in place of them are reasonable." It is apparent from the arguments in the briefs that the words "reasonable" and "unreasonable" are used by the complainants in the ordinary sense. The complainants argue that inasmuch as the interstate commerce act enjoins upon the commission the duty of prescribing a reasonable rate, that any rate which they may pre-

scribe which is not reasonable is unlawful and therefore without the scope of their authority, and that a Federal court may fully
133 review the action of the commission with reference to the reasonableness of a rate prescribed by them as an operating proposition above and beyond the mere question as to whether or not it violates the constitutional guaranties of just compensation.

The defendants insist that the court has no right to investigate the rate prescribed for the future by the Interstate Commerce Commission any further than to ascertain whether or not it violates the constitutional guaranties of just compensation and due process of law. The defendants claim that the only questions properly before the court are the following: (1) If this court finds that the order was regularly made, is not fraudulent or so arbitrary as to exceed the limits of regulation, should it make any other inquiry than as to whether the rates prescribed are confiscatory, (2) under the circumstances disclosed in this case should this court consider the reproductive cost of complainants' property as a material fact in throwing light upon the subject matter of the inquiry, (3) should evidence be considered by this court which has not been first presented to the Interstate Commerce Commission, there being no allegation that such additional evidence is newly discovered or could not have been presented to the commission, (4) should any of defendant's objections to the admissibility of testimony be sustained, (5) do the facts shown of record warrant a finding that the rates prescribed by the commission are confiscatory, (6) are the orders of the commission in any respect unlawful?

These suits involve rates for the transportation of lumber and forest products from points on the Pacific coast to points on and east of the Missouri and Mississippi Rivers. The facts and circumstances leading up to this litigation and out which it grows are as follows:

To the west of the Cascade Mountains from the crest of the
134 range to the Pacific coast is a large heavily timbered district known and dealt with in the record as the coast district, and the coast basis of rates applies to that territory. On the east side of the Cascade Mountains as far east as the city of Spokane, Washington, is another territory which is not referred to or much dwelt on in the testimony and the rates from which do not seem to be involved in these cases. Spokane is the center of another lumber-producing territory. In early years, before this industry at Spokane became sufficiently developed to invade the eastern markets, the old coast rates applied to Spokane and all territory west thereof, but later on, when the Spokane lumber industry outgrew their merely local markets, a differential rate slightly lower than the old blanket coast rate was installed for eastern shipments, so that Spokane forms the basis of a lower differential rate on eastern shipments. Coming farther east and continuing up the slope of the Rocky Mountains, we reach another district which is the basis of a still lower differential rate on eastern shipments known as the Montana-Oregon basis and typified on the Great Northern road by Kalispell,

Columbia Falls, and White Fish, on the Northern Pacific by Hamilton, St. Regis, and Missoula, Montana, and on the Union Pacific and Oregon Short Line Railroads by Boise, Idaho, and Baker City, Oregon.

As all the differential rates are, of course, controlled and regulated by the basic rate or the through rate east from the coast district, the discussion in these cases has been confined to the through rates. Prior to November 1, 1907, the following were the rates in effect from coast points to the larger destinations in the middle west: Coast to St. Paul, 40 cents per one hundred pounds; coast to Omaha, 50 cents; coast to Chicago, 50 cents; coast to Denver, 40 cents; coast to St. Louis, 52½ cents.

135 These rates had been in effect for about 15 years and were first installed at the time the Great Northern Road completed its road to the coast. A higher rate had been in effect prior to that time, but the installation of a 40-cent rate from the coast to St. Paul by the Great Northern Road compelled a reduction in rates by the other lumber-carrying roads, and the foregoing rates had been in effect since the latter part of 1893, or the very early part of 1894. On the first day of November, 1907, the roads duly installed a new tariff of rates, which advanced the rates on corresponding prices as follows: Coast to St. Paul, 50 cents; coast to Omaha, 55 cents; coast to Chicago, 60 cents; coast to Denver, 50 cents; coast to St. Louis, 60 cents.

Prior to November 1, 1907, the rates from the Spokane district were as follows: Spokane to St. Paul, 40 cents; Spokane to Omaha, 45 cents; Spokane to Chicago, 50 cents; Spokane to Denver, 40 cents; Spokane to St. Louis, 52½ cents. By the tariff installed November 1, 1907, these Spokane rates were advanced as follows: Spokane to St. Paul, 45 cents; Spokane to Omaha, 50 cents; Spokane to Chicago, 55 cents; Spokane to Denver, 45 cents; Spokane to St. Louis, 55 cents. Prior to November 1, 1907, rates in the third or Montana-Oregon district were as follows: To St. Paul, 40 cents; to Omaha, 40 cents; to Chicago, 50 cents; to Denver, 35 cents; to St. Louis, 49½ cents; and by the tariff installed November 1, 1907, these rates were raised as follows: To St. Paul, 43 cents; to Omaha, 43 cents; to Chicago, 53 cents; to Denver, 40 cents; to St. Louis, 52½ cents.

The conclusion of the commission was to practically restore the old rates with the exception that they permitted an advance of 5 cents per one hundred pounds on the freight destined to points east

136 of the Mississippi River. The commission drew a line which they called the Pembina-Port Arthur line. Pembina is a station on the international boundary, on the Red River of the North, near the western boundary of Minnesota. They drew a line through Pembina, running approximately due south, following the State lines approximately until they arrived at Sioux City, Iowa, then following the Missouri River down through Omaha and Kansas City, then the line of the Kansas City Southern Road to Port Arthur, Texas, and this line is known as the Pembina-Port Arthur line. West of

that line they restored the rates as they had been previous to November 1, 1907, denying the application for an advance. East of that line they permitted an advance of 5 cents per one hundred pounds.

There is no testimony in this record directly applicable to the effect upon the earnings of the complainants of this new rate established by the commission on through traffic. While it was not as much as the complainants considered reasonable, still on through traffic it was a distinct advance to the northern lines, but no testimony has been offered showing how this rate actually affected the earnings of the complainants.

The testimony of the complainants has been mainly directed to showing that the old rates in force for 15 years prior to November 1, 1907, were unreasonably low and did not produce their fair share of returns or remuneration to the roads. Their testimony has been largely confined to a statement of the conditions prevailing in 1893, when the old rate was first installed, and to a statement of the changed conditions prevailing in 1907, on account of which they claimed the advance in rates was justified.

The complainants admit that it is not possible for them to show the
actual cost of the transportation of a carload of lumber, the
137 actual value of that portion of their property which is devoted
to the lumber traffic, what relation the net returns on lumber traffic bear to the entire body of the net returns.

They have offered testimony substantially showing that in 1893, at the time of the installation of the old rates, the lumber industry upon the cost was in its infancy and unable to compete in the middle west with the white pine of northern Michigan, Wisconsin, and Minnesota. It is demonstrated that in 1893 the white pine of northern Michigan, Wisconsin, and Minnesota controlled the entire Northern Middle West market as far south as St. Louis. This was on account of the cheap rates of water transportation afforded by the Great Lakes and the Mississipi River. In 1893 the railroads had a large eastbound empty-car movement. There were no products on the coast sufficient to load for the eastern markets the cars required to carry to the coast all westbound traffic.

For the purpose of providing loads for the eastbound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul.

In 1893 the prices of labor and materials and all things which went into the equipment of railroads in the handling of traffic, as well as the price of lumber, were very low.

In the period intervening between that time and November 1, 1907, the situation has been reversed. The white pine of northern Michigan, Wisconsin, and Minnesota has practically disappeared from the market and is no longer an important element of competition. The Oregon and Washington lumber has practically acquired the old white-pine market. The lumber industry in the coast district has grown to enormous proportions and become an exceedingly pros-

perous industry. Prices of labor and materials have also increased to a very large extent, and the empty-car movement which in
138 1893 was from the west east is now from the east west, or a westbound empty-car movement now prevails. To what extent this is due to the large output of coast lumber has not been clearly shown. It appears to be partly due to other species of traffic, but to a large extent it is no doubt brought about by the very great increase in the shipments of lumber east.

On the other hand it as clearly appears that the price of stumpage, prices of labor, price of machinery, and all other elements entering into the lumber traffic have increased in proportion, as have the prices of those things which enter into the transportation increased.

It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements, and in addition thereto have accumulated large surplus funds.

Two of the complainants in this action, the Great Northern road and the Northern Pacific road, have offered before the master a large volume of testimony consisting of an estimate made by their engineers and heads of departments as to what it would cost to reproduce their railroads. This estimate contemplates in the case of the Northern Pacific a period of 12 years for the reproduction of the road and in the case of the Great Northern a period of 8 years. In making the estimate it is not contemplated that any net returns for traffic or business done during the period of construction shall be had. In the case of the Northern Pacific the estimate approximates $700,000,000.00, and in the case of the Great Northern, $550,000,000.00.

It must be borne in mind that this cost of reproduction is not
139 an ultimate fact to be considered in the solution of these cases, but merely a collateral fact offered to influence the court's conclusion upon the ultimate fact as to the real value of the properties.

The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them we think this evidence so remote and speculative as to be absolutely immaterial in this case.

Finding of facts.

Upon careful consideration of all the evidence in this case I find the following ultimate facts which, in my judgment, is a fair analysis

of the evidence and illustrates the situation in reference to the rates in question.

I. In 1889 a 40-cent rate per one hundred pounds was installed by the Union Pacific system from Portland, Oregon, to Denver, Pueblo, and other Colorado common points. In 1893 a 45-cent rate was installed by this system from Portland to Council Bluffs and Omaha and other Nebraska main-line points. Concurrently with this rate a rate of 50 cents was made to Chicago and 52½ cents was made to St. Louis. In 1901 the 45-cent rate to Omaha and Council Bluffs
140 was raised to 50 cents and extended or blanketed to include Sioux City, Kansas City, and other points west thereof. The 50-cent rate to Chicago was also maintained.

II. In 1893 the Great Northern road was completed to the coast, and in the latter part of that year, or the early part of 1894, installed the superseded rates here in controversy, which were met by the Northern Pacific System and were as follows: To St. Paul, 40 cents per one hundred pounds; to Chicago, 50 cents; to the Mississippi River, 50 cents; to St. Louis, 52½ cents; to Denver, 40 cents; to Missouri River points, 50 cents.

The Union Pacific System never met the 40-cent rate to St. Paul by any of its Missouri River crossing rates. Its 50-cent rate to Omaha continued concurrently with the 40-cent rate to St. Paul from 1901 to November 1, 1907. But because of the 50-cent rate to Chicago from St. Paul, via the northern lines, it was obliged to blanket or extend its Omaha rate of 50 cents to Chicago.

III. At and prior to 1893 the lumber manufacturing industry in Washington and Oregon was in its early infancy. Except for purely local consumption the mills disposed of their products at points reached by water transportation. The volume of business continued to be inconsiderable for several years after the Great Northern road reached the coast.

IV. The superseded rates were made voluntarily by the carriers in 1893 avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic
141 for the roads and more particularly and immediately for utilizing an eastbound empty-car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well-defined eastbound empty-car movement from the coast.

V. In 1893, at the time the superseded rates were installed, the entire country was suffering from the effects of the financial panic of 1893; "hard times" prevailed and industries of all kinds were at a low ebb.

VI. In 1893 the lumber market of the northern Middle West from as far south as St. Louis was controlled and dominated by the white pine of Michigan, Wisconsin, and Minnesota, and continued to be so controlled for some years thereafter. The cheap water transportation afforded by the Great Lakes and the Mississippi River enabled the white pine to control this market until the supply be-

came inadequate to the demand and in fact exhausted. Thereafter this market became to a certain extent a battle ground between the Washington and Oregon lumber and the western pine from the Spokane district on the one hand and the southern pine on the other; but the unexampled revival of industry and increase in general business prosperity enjoyed by this middle district since 1897 has created such an enormous demand for lumber and forest products that this competition between western and coast lumber and southern lumber seems to have had but little effect in keeping down the price of lumber.

VII. The superseded rates of 1893 were voluntarily continued in force by the carriers until November 1, 1907, and during that period, especially during the last few *few* years thereof, under
142 this rate the lumber industry of this coast territory increased enormously. Many mills were built in the interior where they were solely dependent upon rail transportation. Except a limited number of mills situated at points like Portland, Oregon, the great majority of the mills engaged in this industry are wholly dependent on the railroads for an outlet to markets. As the industry has grown it has prospered and been profitable ever since the 40-cent rate went into effect. At the time of the hearing of these cases before the commission the amount invested in the lumber business in Oregon was approximately $60,000,000.00, exclusive of mills, logs, standing timber, and timber land. Approximately 40,000 persons were directly engaged in the industry. The annual pay rolls exceeded $20,000,000.00, and the annual output of lumber exceeded 2,000,000,000 feet. There is no sufficient data in the record from which to accurately state the number of lumber-producing plants in all this coast territory, the amount of the investment therein, or the number of men employed therein, but it clearly appears that there are many hundred mills in which are invested many millions of dollars and in which many thousands of men are employed, that the annual output has been constantly and rapidly increasing in recent years, and that the industry is the most important one of that region.

Part of the product of the mills of this coast territory are practically subject to no competition because of the superior nature of the lumber. On long timber there is little or no competition from other producing points. A certain portion of the lumber manufactured on the north Pacific coast can compete successfully with other lumber in any market. They there produce certain dimensions and qualities that are produced to but a limited extent for delivery elsewhere. These qualities are the choice portions of
143 the logs. Necessarily in producing them a large quantity of common lumber is also produced. The greater part of this common lumber finds its market locally or in the nearby States and in Colorado, Nebraska, and North and South Dakota. Comparatively little of this common lumber reaches the Missouri and Mississippi River territory. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates.

The combined north Pacific coast States market about 5 billion feet annually as against approximately 19 billion feet of southern and white pine, showing that the southern and white pine predominate and fix the price in competitive markets.

During the summer of 1907 it became known and understood among the lumber trade that the then existing rates were to be increased. The industry immediately began to feel in some degree the effects of this unsettled rate situation. Purchasers at destination points began to postpone the placing of orders and to cancel orders already placed. The reasons given were that on account of the increase in rates lumber would be cheaper in the near future. One salesman testified that on a trip where he would ordinarily take orders for from 300 to 500 cars of lumber he was unable to get a single order because he would not guarantee the old rates. Dealers and purchasing agents of railroads refused to buy on the ground that after the advanced rates became effective there would be a falling off in the price of lumber caused by the surplus that would exist in producing territory which could not reach its former competitive markets under the advanced rates.

At and for some months prior to the hearing of these cases before the commission the lumber industry in this coast territory was greatly depressed and a large percentage of the mills had been shut down and were not in operation.

144 At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business.

At the time the superseded rates were installed stumpage in the coast district was very low, some purchases being made at 25 cents per thousand feet. This low price continued for some time after that date and comparatively few mills took advantage thereof. As the area of the white pine in Wisconsin, Michigan, and Minnesota decreased the value of Pacific coast stumpage increased, as did also the value of the yellow pine stumpage of the Southern States. The increase in the price of Pacific coast stumpage has been gradual and steady since 1893. The greatest increase has occurred since 1902 and the largest part of that increase has taken place since 1905. Prior to the advance in rates in November, 1907, prices in Oregon ranged from $1.50 to $2.50 per thousand feet and along the Columbia River it was as high as $3.00. The majority of the millmen own their stumpage, but the majority of the stumpage is not owned by the millmen. Many large tracts are held by individuals and corporations that are not engaged in the manufacture of lumber. The price of logging has gradually increased until at the time of the hearing of these cases before the commission it cost between $5.00 and $6.00 per thousand feet to get logs to the mill. In some parts of Oregon it was even higher. The price of logs in the open market has likewise increased since 1893 from $2.50 to $3.00 per thousand feet in the year 1893 up to $6.00 in 1900. This price continued until 1902, then with

various increases and fluctuations to 1904 and 1905. In 1905 the price reached $9.00 per thousand feet. Following the Valparaiso and San Francisco disasters the price increased during 1906 and 1907
145 to $13.50 per thousand feet. After the announcement was made that the lumber rates were to be advanced the price of logs fell off $1.00 per thousand feet in the month of July, 1907; in August, 1907, the price fell off $1.50 per thousand feet with a corresponding fall in the month of September. And the total decrease from August to December was $4.00 per thousand feet. At the time of the hearing of these cases before the commission fir logs were sold for $9.00 per thousand feet in Portland, which price included a 50-cent towage charge.

The cost of manufacturing lumber has kept pace with the increased cost attendant upon all other industrial pursuits. From 1904 to 1907 the advance has been between 35 and 40 per cent in both labor and material. The increase in labor exceeds the increase in material, but the two make an average of about 40 per cent.

During the year 1906 the millman's average profit per thousand feet upon all classes of lumber produced by them ranged from $1.60 to $2.80. A lower profit was made by mills that bought logs in the open market or those operating where logging was more expensive. The higher profit was made by mills that owned their own stumpage, for which they charged themselves from $1.00 to $1.50 per thousand feet. Some of the mills that made a profit of $2.80 per thousand feet in 1906 made a profit of 26 to 50 cents per thousand feet in 1905. The unusual general prosperity of the year 1906 coupled with the extraordinary demand for lumber caused by the Valparaiso and San Francisco disasters undoubtedly account to a considerable extent for the sharp increase in profits in the year 1906.

In the year 1890 there was a decided predominance in the empty car movement eastbound amounting at that time to about 161.17 per cent over the westbound empty car movement on the Northern
146 Pacific Railway. In 1891 the predominance of eastbound empty car movement over westbound had decreased to 72.17 per cent and in 1892 it had further decreased to 4.35 per cent. In 1893 and all subsequent years down to 1907, conditions have been reversed and during this entire period there has been a large predominance of westbound empty car movement over the eastbound on the Northen Pacific road. Approximately the same condition prevailed during the year referred to upon the Great Northern road. In 1893, when the Great Northern was completed to the coast, the westbound loaded freight car mileage on the main line between Havre, Montana, and Seattle, Washington, was 3,688,568 as against 2,366,546 eastbound. At the same time the westbound empty car mileage was 607,088 as against 1,922,262 eastbound. In 1897 the westbound loaded mileage was 7,104,181 as against 10,050,979 eastbound, whereas the empty westbound mileage was 3,527,377 as against only 576,071 eastbound empty mileage. In 1906 the westbound loaded mileage was 22,939,649 as against 32,323,906 eastbound loaded mile-

age, whereas the westbound empty mileage had increased to 11,860,201 as against 1,806,850 eastbound empty mileage.

Ever since 1903 the condition in respect to the predominance of empty car mileage has been changing until in 1907 the westbound empty car movement greatly predominated over the eastbound empty car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the west to the consuming markets of the east. The establishment of manufacturers of finished products in the west has to a certain extent diminished the volume of manufactured products moving from the east to the west.

In 1890 upon the Northern Pacific the predomination of west-
147 bound loaded car mileage over eastbound loaded car mileage amounted to 57.23 per cent, while in 1906 the predomination of eastbound loaded car mileage over westbound loaded car mileage amount to 43.40 per cent, and in 1907 to 3.2 per cent. This sharp and sudden decrease in the percentage of eastbound loaded car mileage over westbound loaded car mileage in the year ended June 1, 1907, was, however, not normal; but due to temporary and unusual causes, viz., the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snow-fall and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months.

The empty car movement westward predominates to a greater extent on the Great Northern and other lines on which the products of mines constitute a greater proportion of the traffic handled than forest products, than on the Northern Pacific line, which hauls a much larger percentage of forest products than do the other carriers. For the year ending June 30, 1907, the percentage of tonnage constituting all products of mines out of the total number of tons carried on the Great Northern Railway was 51.75 per cent, and all forest products 14.50 per cent. On the Northern Pacific the percentage of mine products out the total tonnage was 21.05 per cent and of the forest products 37.38 per cent. A similar situation is shown to have existed on the Union Pacific system during the same period.

During all the period involved in this discussion, viz., from 1893 to November 1, 1907, the cost of operation of the complainants' roads
148 has constantly increased. This increase is fairly illustrated by the testimony of the witness R. I. Farrington relating to the cost of operation of the Great Northern road. He testifies: "Taking the year 1895 as one hundred per cent, the cost per freight train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as one hundred per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently it cost nearly

63 per cent more to haul a freight car one mile in 1907 than it did in 1895."

Concurrently with this increase there has been a persistent and well-directed effort on the part of all the carriers to wisely economize in the matter of cost of operation, and such results have been achieved as to preclude the idea that the increase in the cost of operation is due to any failure in wise and economic operation. The testimony clearly indicates that all these roads are wisely and economically handled, at least so far as cost of operation is concerned.

Since 1897 the lumber industry of this coast and Spokane territory has developed and increasd so rapidly that it has constantly outrun the capacity of the roads to handle it, and these roads have been compelled ever since 1897 to spend vast sums in improvements, extensions, and for more powerful equipment in order to keep pace with the ever-increasing eastbound traffic from those points. Other species of eastbound traffic have also increased, but the greatest increase is shown to be in the lumber traffic.

During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly satis-
149 factory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surpluses, and clearly appear to have been on the whole prosperous and to have earned fairly satisfactory net incomes from their transportation.

By the orders here under discussion the commission restored the rates in force immediately prior to November 1, 1907, as far east as the so-called Pembina-Port Arthur line and to the territory east thereof, permitted an advance of 5 cents per one hundred pounds, which operated to fix a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and Duluth. By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina-Port Arthur line was established. The short-line distance over this system from Portland to Omaha is 1,799 miles and to Kansas City and other Missouri River points is 2,030 miles. From the evidence and exhibits offered it fairly appears that this 50-cent rate over this system will result in a revenue of 5.56 mills per ton mile to Omaha and 4.92 mills per ton mile to Kansas City, and that such revenue is far below the average revenue per ton mile on any of the complainant roads, and that this 50-cent rate over this system to Omaha is a very low rate. The distance from Tacoma, Washington, to Minneapolis via the Northern Pacific lines is substantially 1,896 miles, from Portland to St. Paul 2,052 miles, and from Astoria to St. Paul 2,072 miles. Omaha and St. Paul are on a parity as bases of through rates, and are so considered by the commission and by rate experts. (See commission's decision in Spokane v. Northern Pacific Ry. Co., decided June 7, 1910, 19 I. C. C. 162.) By the orders here under discussion the commission prescribed a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis,

150 and Duluth. This rate will undoubtedly result in a revenue to the northern lines measurably less than the revenue yielded to the Union Pacific line by the 50-cent rate to Omaha. Under the old 40-cent rate to St. Paul the revenue per ton-miles accruing to the northern lines was 3.90 mills, and under the 50-cent rate installed November 1, 1907, would have been 4.87 mills from Portland to St. Paul. From Tacoma to Minneapolis under the 40-cent rate it was 3.98 mills per ton-mile, and under the November 1, 1907, 50-cent rate it would have been 5.27 mills.

Evidence was offered by the Great Northern Railway Company and the Northern Pacific Railway Company for the purpose of proving the value of the systems of railroads owned and operated by each of said companies, respectively. This evidence consisted primarily of schedules of all items of physical property based upon the present cost of reproduction. These schedules were prepared in great detail, and the evidence indicates that they are the result of extended examination of records of these companies, inspection of the properties, and consideration by competent experts of the various questions involved in an appraisal of this kind. These schedules were examined and checked by the defendant during a period of about six months pending the hearing of these cases. The record of the companies were open to the force employed by the defendant for that purpose, under the direction of an engineer selected by it, and while it is probable that in view of the large volume of records bearing upon the cost of construction of various items of the property the defendant was not able to fully examine all the records in that regard, it appears that they were thrown open to it and opportunity offered for as full and complete examination of them as it elected to make. At the conclusion of this examination the engineer selected by the defendant appeared before the master, and
151 evidence produced by him is in the record. It is sufficient to say that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results reached are not widely apart from those reached by the engineers of the railroad companies.

Evidence was also offered by the two companies in question of the values of their properties based upon computations from market prices of stocks and bonds for fairly representative periods. This method of ascertaining the value of railroad property seems to have the support of a number of decided cases and is of value in the consideration of questions of this character.

The record contains evidence of the amount of outstanding stocks and bonds of these two companies, together with a full showing for

recent years of current results of operation. There are in evidence exhibits showing gross revenues, operating expenses, taxes, net revenues, amounts of interest paid upon obligations, dividends paid, amounts appropriated from income for various purposes, and in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures.

Of the methods made use of in these cases for the purpose of indicating the approximate value of these properties it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved.

152 In the determination of the issues presented by these cases, involving as they do rates upon a single item of traffic, the value of the total properties of these companies is of only indirect bearing. The defendant commission appears to have reached this conclusion and to be of that opinion because in a case of like character involving rates on lumber from southern and southeastern points of production to the Ohio River and north thereof it held to that effect. (Central Yellow Pine Association v. Illinois Central Railroad Company, 10 I. C. C. 529.) The master does not understand that these companies offer this evidence upon the theory that it will directly aid in the determination of the issues here involved. They do offer it for the purpose, as stated, of demonstrating that the return during recent years upon the fair value of these properties has not been and is not excessive; they argue that if the rates upon lumber and other forest products embraced within their tariffs filed November 1, 1907, are neither unjust nor unreasonable, the results of the operation of these companies justify the effort thus made to increase revenues to meet increased cost of operation.

In the conclusion at which the master has arrived it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds.

The evidence clearly shows that these lines of railroad are well located and maintained; that they are efficiently operated and occupy a portion of the country from which it is reasonably plain that under normal conditions they may expect a constantly growing vol-

153 ume of traffic; they seem to have, from the vitality of their own organizations, as well as that of the industries tributary to them, the cities, towns, and general character of the country through which they operate, all of the valuable elements ordinarily comprehended within the term "going concern," and from the fact that they have been established and in operation for many years and during recent years at least with fair results, they each have the advantage which flows from long and favorable relations with the shipping public over and above a new road or roads constructed or operated

through the same territory. These considerations in every line of business indicate important elements of value over and above mere cost of construction, and justify the conclusion which is fortified by ample authority that there exist in these properties large elements of value of this character.

The defendant in these cases has directed attention to the annual reports of these companies and other forms of statistical information tending to prove favorable results from operation, and it is sufficient to say in considering the arguments thus advanced that they are largely supported by the statistics referred to, and lead to the necessary conclusion that the properties contain elements of value in large measure as a direct result of the successful operation referred to.

It may properly be said, however, in considering the arguments offered by the defendant that these companies have been able to pay interest and dividends at a fair rate and accumulate surplus funds which have been appropriated from income and reinvested in the property, that such conditions are necessary, within proper limits, in order to enable companies of this kind to meet the tremendous increases in cost of operation incurred in recent years and the growing demands upon them for increased facilities to accommodate the growing commerce of the country through which they pass. Upon
154 the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case the results from operation of either of these companies were in any degree excessive.

On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames, 169 U. S. 522, and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions.

Conclusions of Law.

Upon consideration, the master has adopted the following conclusions of law which, in his judgment, govern and control the decision of these cases:

(1) A just and reasonable rate within the meaning of the interstate commerce act is a rate which (a) furnishes to the carrier just compensation for the services rendered and fairly, reasonably, and justly recognizes and considers his common rights and interests in the traffic under consideration; (b) which fairly, reasonably, and justly recognizes and considers the interest of the public in such traffic; (c) which fairly, reasonably, and justly recognizes and considers the interests of the shippers in such traffic, and (d) which on its face does not manifest or evince any arbitrary violation, perversion or disregard of the spirit or intent of the interstate commerce

law, but appears to have been made or promulgated fairly, justly, and reasonably in accordance which the fundamental principles of the law.

155 (2) The Constitution guarantees just compensation for private property devoted to a public use and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation cannot be predicated upon it.

(4) In determining the justness and reasonableness of the net returns to a railroad a principal consideration is the value of the property devoted to the public use; and in determining this value the reproductive value, or a just estimate of what it would presently cost to reproduce the properties as they presently stand, is of considerable material aid.

(5) But where the question under consideration is the justness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate.

156 (7) The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts.

(8) It is, however, limited in the exercise of its authority, first, by constitutional limitations, second, by specific limitations contained in its organic act, and third, by the spirit and intent of its organic act and the fundamental principles underlying its organic act.

(9) An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it, and because of which it was enacted.

(10) Federal courts of equity have the power and are charged with the duty to relieve from orders of the Interstate Commerce Commission which deprive complainants of their property without due process of law or take it without just compensation, from orders

which are beyond the delegated power of the commission, and also from orders which evidence so unreasonable and arbitrary an exercise of its power and which are so inherently inconsistent with and violative of the spirit and intent of the interstate commerce act as to be substantially without, though formally within, their delegated authority.

(11) An order which on its face is inherently inconsistent with the fundamental principles of rational justice and palpably violates and perverts the spirit and intent of the interstate commerce act,
157 though in form within the limits of delegated power is in fact beyond those limits, and is an unlawful order and one which results in taking of property without due process of law.

(12) On pages 39, 40, and 41 of volume one of the record appears certain objections entered by the defendant to the admission of evidence in these cases. Objection number one subdivided into sections A and B object to any testimony which does not show that the rate fixed by the Interstate Commerce Commission is confiscatory of the property of the carriers within the meaning of the fifth amendment to the Constitution of the United States, and to any testimony which tends to show that such rate is otherwise (aside from the question of confiscation) unreasonable.

This objection is overruled for the reason that while a rate may not be confiscatory it may yet be so unjustly discriminatory and unduly preferential and may so arbitrarily violate the fundamental principles of rational justice and the spirit and intent of the interstate commerce act as to amount to the taking of property without due process of law; and any evidence which tends to show such a situation is admissible and can be considered by the court.

Objection number two is based upon the claim that the allegations of the bills are not broad enough to amount to an allegation of confiscation.

This objection is overruled. The bills allege that the rates fixed by the commission are so unremunerative and so far below what is just and reasonable as to be confiscatory. I think the allegations are broad enough to admit of proof of confiscation. The Constitution provides that no property shall be taken for public use without just compensation. The interstate commerce act provides that all rates shall be just and reasonable. The language of these two
158 provisions means the same thing and by these two provisions of law a point is fixed below which a carrier cannot be compelled to go and above which it may not lawfully go. Anything less than that which is just and reasonable will necessarily amount to confiscation, and therefore when a rate is attacked on the ground that it is less than that which is just and reasonable it is in effect an allegation of confiscation and permits the courts to inquire into the rate to the extent of ascertaining whether or not it is so low as to be less than just and reasonable.

Objection number three is based on the claim that no new and additional evidence is admissible for any purpose unless the complainants

have first presented or offered to present the same to the commission for its consideration, or in effect taken such proceedings as amount to an application for a new trial.

This objection is overruled upon the authority of the Court of Appeals for the eighth circuit in Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, 164 Fed., 645, wherein it is held: "It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to an ascertainment of what was determined by the commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but on the contrary the hearing may be de novo, and may include the taking and consideration of evidence other than that before the commission."

Objections 4, 5, and 6 are elaborations of the principles sought to be enforced in objection number three.

Objection number four proceeds upon the principle that no new or additional evidence is admissible unless it is what is known in law as newly discovered evidence; that is, evidence unknown to the complainants at the time of the hearing before the commission.

159 Objections numbers 5 and 6 proceed upon the principle that no such newly discovered evidence can be offered unless it has previously been offered to the commission for its consideration and the commission has failed or refused to hear it.

The point of these objections is that it is unfair for a carrier to fail to take advantage of the opportunity offered under the law by the commission for a full hearing and thereafter apply to the courts to protect it against orders which might never have been entered had the carriers so taken advantage of their opportunity for a full hearing.

In such a case a carrier would be without any standing in a court of equity, for he would not be coming into a court of equity with clean hands. But where it appears that a carrier honestly and in good faith has presented his case to the commission on a complaint, and in good faith presented to the commission for its consideration all the evidence then in its possession, it ought not to be, and is not, precluded from presenting to the courts in a suit for an injunction any other evidence relative and material to the suit of which it may avail itself. The objection seems to proceed upon the theory that a hearing before the commission is like a suit at law, and that the commission's decision is dependent upon the record, and that to disturb the decision by other evidence can only be done by the presenting of newly discovered evidence not within the knowledge and possession of the carriers at the time of the trial, and that the decision can only be disturbed on this ground by a proceeding before the commission analagous to a motion in a suit at law for a new trial upon the ground of newly discovered evidence.

This theory is quite at variance with the defendant's other theories and claims as to the powers of the commission. The commis-

160 sion is not confined in its decision to the consideration of the

particular evidence submitted to it in any hearing, but is supposed to possess all knowledge and wisdom pertaining to the matters under consideration, and is at liberty to use all knowledge it may possess or obtain by any means both within and without the record. And the evidence actually submitted to the commission in any case is as a rule but a small part of the knowledge upon which the commission bases its decision. We think the court ought not to decline to hear a complainant on the ground that he has not first presented all his case to the commission, unless it appears that his failure in this respect amounted to a fraud on the commission and was a deliberate neglect to avail himself of the opportunities offered by the commission for a full hearing. Nothing of the kind appears in this case, and the objections to the new and additional evidence are overruled.

Discussion.

"Section 1 of the act to regulate commerce" provides, among other things, "all charges made for any service rendered in the transportation of passengers and property * * * or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

This section further imposes upon common carriers the duty to furnish transportation at "just and reasonable rates applicable thereto."

Section 2 defines, prohibits, and declares unlawful any unjust discrimination between persons by means of special rates, rebates, drawbacks, or other devices, and section 3 declares it to be unlawful for any common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company,
161 firm, corporation, or locality, or any particular description of traffic in any respect whatever, or to subject such persons, entities, localities, or particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 15 provides that the commission is authorized and empowered and it shall be its duty whenever, after a full hearing upon a complaint made as provided in section 13 of the act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or discriminatory, or otherwise in violation of any of the provisions of of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what practice or regulation in respect to such transportation is just, fair, and reason-

able to be thereafter followed; and to make an order that such carrier shall cease and desist from such violation to the extent to which the commission find the same to exist and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rates or charges so prescribed, and shall conform to the regulations or practice so prescribed. An analysis of this power and authority resolves it into three divisions. The commission has power to interfere (a) when rates are unjust and unreasonable, (b) when the rates and also the practices and con-
162 duct of the business are unjustly discriminatory or unduly preferential, and (c) when specific requirements of the statute are violated.

And the remedies which they are authorized to determine and prescribe for the future are: (a) Just and reasonable rates, (b) just, fair, and reasonable regulations and practices, and (c) orders compelling the abandonment of illegal practices consisting in violations of specific requirements of the statute.

A principal question in these cases is as to the extent of the powers thus conferred on the Interstate Commerce Commission and particularly as to the extent of the powers stated in subdivision (a).

While the bills allege that the rates fixed by the commission are so low, unjust, and unreasonable as to result in an undue preference of the lumber traffic over other descriptions of traffic and discrimination in its favor against other species of traffic, still they nowhere point out any particular class or species of traffic which is discriminated against, and nowhere point out where, to what extent, or in what manner such discrimination is had, nor state any facts upon which discrimination and undue preference can be predicated.

The substance of those allegations of the bills with which the master is concerned is that the rates fixed by the commission are so low and unremunerative as to be unjust and unreasonable, and therefore the commission exceeded their power in prescribing them, and are taking the carriers' property without due process of law, and further that because the rates are unjust and unreasonable and less than what is just and reasonable they are confiscatory and in violation of the constitutional guaranty of just compensation.

It will be seen therefore that the cases turn almost entirely upon the extent of the power conferred upon the commission to fix
163 rates for the future. The defendant claims that in the matter of fixing rates for the future under the circumstances and within the statutory requirements conferring jurisdiction to inquire (such as complaint, notice, full hearing, etc.), their power is as full, plenary, and absolute as is the power of Congress itself: that its reasons, motives, and discretionary powers may be as broad and plenary as those of Congress, and that its conclusions can only be attacked on constitutional grounds as a confiscation.

The complainants, on the other hand, claim that this power is a limited power, limited not only by the constitutional guarantees of just compensation and due process of law, but limited also by the

terms and language of the statute itself, and that if it can be shown that any rate fixed by the commission is not just and reasonable, but is unjust and unreasonable in and of itself, it is an unlawful rate and beyond the power of the commission to prescribe or enforce.

The solution of this proposition depends entirely upon the interpretation to be put upon the words just and reasonable. If the interpretation of these words is to be based upon their widest sense, and upon all the reasons and considerations which Congress might entertain in the enactment of a statute including all grounds of public policy and all those considerations upon which rest the exercise of police power, then the position of the defendant is correct.

If, on the other hand, they are to be interpreted in a common and limited sense, and in a business sense, as applied to the business transactions between shippers and carriers, then this contention of the defendants is not correct, and the court may determine whether or not these rates are in truth and in fact in and of themselves just and reasonable and therefore lawful, or unjust and unreasonable and therefore unlawful, and in the latter event enjoin their
164 enforcement as an unlawful and unwarranted exercise of power, which amounts to the taking of property without due process of law.

What, then, is a just and reasonable rate within the meaning of the interstate commerce act?

In the first place the Constitution supplies an absolutely essential and necessary ingredient or characteristic. It guarantees just compensation for private property taken for a public use and any rate which violates this guaranty is a void rate. In Missouri, Kansas & Texas R. Co. v. Interstate Commerce Commission, a case from the Eighth Circuit in 164 Fed. 645, the court said: "Its (the commission) determination or action does not and cannot preclude judicial inquiry into the justness and reasonableness of the rates within the meaning of the constitutional guaranty, for that is a judicial question." "Neither Congress nor any legislative or administrative body acting by its authorization, can competently establish rates for the transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all circumstances is just and reasonable, since such action would deprive it of its property without due process of law and would be a taking of its property for public use without just compensation in violation of the fifth amendment to the Constitution." Just compensation means the fair and reasonable value of the property taken. In condemnation proceedings it means the fair and reasonable value of the property for the highest use to which it can fairly and reasonably be put.

Applied to transportation rates it must mean the fair and reasonable value of the particular service rendered, provided such services are rendered under normal circumstances. It is frequently said that regard must also be had to the rights of the public and to the interests of the shippers. In my judgment this means that a rate

165 may not be so high as to prevent the free access by the public to those commodities which they desire and require; or, in other words, so high as to prevent the free movement of the traffic, nor may a rate be so high as to practically divert a shipper's profit into the treasury of the carriers, and thus destroy the shipper's business. But these considerations are in a measure secondary and can only apply after the first requisite of just compensation has been complied with. The prime consideration is the constitutional consideration of just compensation to the carrier. He is devoting his labor and property to a public use and under the law is compelled to do so. He may not refuse the traffic. He must respond to its demands. But for his service and his property he is entitled to just compensation, and no law can deprive him of it.

It is further said that just and reasonable rates need not necessarily guarantee a profit to the carrier. But this is simply another way of applying and illustrating the rule that a person is entitled to the fair and reasonable value of his property for the highest use to which it can reasonably and fairly be put.

Of course a poorly and injudiciously projected road, which is not a reasonable commercial necessity and is not commercially justified, and which is poorly and wastefully operated, cannot expect to extort a profit out of the patrons which may be necessarily dependent upon it.

It is the value of the property for a reasonable use that is to be determined. An expensive house situated in the midst of a swamp would add no considerable value to the property, and the owner would not be entitled to a compensation for the cost of his house.

166 A house well located commercially may by ill usage depreciate, and in determining its value for any purpose the expense of restoration would have to be considered and deducted.

Reasonable rates are therefore always to be based upon normal conditions and determined with a view to whether or not the road is reasonably justified as a commercial enterprise, is a reasonable commercial necessity, is normally operated with reasonable economy and skill.

But when all is said of those characteristics of a just and reasonable rate it is still true that the distinguishing characteristic of a just and reasonable rate is just compensation, and that these other characteristics are what is known in logic as incidental characteristics.

The constitution fixes this absolute point below which no carrier can be compelled to go. The interstate commerce act does not permit him to go above it. Anything more than this is a violation of this law, and anything less is a violation of the constitutional rights.

The next question is, How far does this distinguishing characteristic extend?

Inasmuch as it is the entire body of the property which is devoted to the public use, does this characteristic extend merely to the entire body of net revenues returned to the carriers, or does it extend to

and characterize each particular rate and segregated element of the income?

In theory and on principle this latter proposition ought to be true. Each rate ought in and of itself, in order to be just and reasonable, furnish just compensation for the service rendered, and if each rate were just and reasonable the entire body of net returns would also be just and reasonable. In Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, cited above, the court said: "Reasonably interpreted the statute, by which alone the Interstate
167 Commerce Commission derives its power, unmistakably requires that all rates prescribed thereunder shall be just and reasonable within the constitutional guaranty, and also that they shall not be unjustly discriminatory or unduly preferential; and those requiremnts plainly operate as limitations upon the power of the commission."

No doubt it is the spirit and intent of the interstate commerce act that each particular rate shall be in and of itself a compensatory rate, and that the theory of the statute is that if each rate is in and of itself just and reasonable the entire body of net returns will also be just and reasonable.

But because of the many stubborn and obtrusive difficulties in the way of the practical application of this proposition, because it is practically impossible with any degree of satisfactory accuracy to determine the cost of a particular traffic, or the proportion of the company's property devoted to its use, or whether or not in and of itself it yields a profit, and because also the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy, it has been held in actions based upon the charge of confiscation through the reduction of a single rate or segregated portions of the general body of business, that this distinguishing characteristic of just compensation does not extend to a single rate and need not be considered in determining whether or not it is just and reasonable beyond the question as to whether or not it so affects the general body of net returns as to reduce them to less than just compensation.

In other words, confiscation cannot be predicated upon a single rate in and of itself, particularly because it is impossible
168 to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns.

It is contended that the following cases, decided by the judges of the Eighth Circuit and the Supreme Court, are authorities against this contention and establish the doctrine that a rate must be com-

pensatory in and of itself. Southern Ry. Co. v. St. Louis Hay Co., 214 U. S. 297; Stickney v. Interstate Commerce Commission, Supreme Court, January 10, 1910; Peavey & Co. v. Union Pacific Ry. Co. (Eighth Circuit), 176 Fed. 409.

It will be observed, however, that those cases involved charges for incidental services rendered by and to carriers in aid of transportation, which charges are by the terms of the interstate commerce act required to be stated separately. The charges in the Hay case were charges for a special privilege "in no sense a part of the transportation and outside thereof."

The charges in the Stickney and Peavey cases were charges paid by the carriers to third persons who rendered services in aid of transportation, and section 15 of the interstate commerce act makes it the duty of the commission to determine the value of those services in and of themselves at a just and reasonable rate.

Manifestly an order made in the exercise of this power, absolutely or in part destroying an incidental charge considered to be just and reasonable in and of itself, is confiscation of the grossest kind
169 in addition to being a gross abuse and perversion of authority and the taking of property without due process of law.

It seems clear, therefore, that in cases involving a single rate, such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out.

The defendant claims that this conclusion must necessarily determine these cases in its favor. There is no evidence in the record clearly showing, or indeed attempting to show, that this lumber rate prescribed by the commission will so affect the general body of net returns as to materially reduce them from what they have been, and it is conceded on all sides that the carriers are and have been fairly prosperous, and that their net incomes have been fairly satisfactory at least.

The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost.

And the defendants claim that no confiscation having been shown, it necessarily follows that the rates are just and reasonable.

It must be remembered, however, that this rule confining the inquiry as to confiscation in the matter of a single rate to the relation and effect of that rate to and upon the general body of net returns is not a rule based upon theoretical justice, but is a rule of convenience compelled by the exigencies of the situation. It is founded upon compulsion, and not upon principle. Furthermore, like
170 all other rules of law, it is intended and promulgated in the

interests of justness and reasonableness, and not to promote injustice and unreasonableness. It cannot be used as a shield behind which the commission may hide, and with which they may protect themselves in the arbitrary and inequitable exercise of their powers. It is true the commission is an administrative body, exercising delegated legislative powers, and that the wisdom and expediency of the lawful discharge of their administrative powers may not be questioned by the courts.

Nevertheless, it must be remembered that the power of the commission to fix and determine rates is a limited power. In Missouri, Kansas & Texas Ry. Co. v. Interstate Commerce Commission, 164 Fed. 645, the court said: "Power to determine and prescribe what are just and reasonable maximum rates to charged in interstate commerce is in a limited way conferred on the Interstate Commerce Commission by section 15 of the interstate commerce act."

It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws.

But an administrative body is not so free to do as it pleases, but in addition to those specific limitations pointed out by the constitution and the particular provisions of its organic law, is always and forever limited and controlled by the spirit and intent and the fundamental principles of the organic law creating it. It may not, therefore, while acting within the forms of its delegated powers, promulgate rates and regulations which in effect violate the spirit and intent of those powers.

It is the intent and purpose of the interstate commerce act
171 that the commission shall determine and prescribe just and reasonable rates, just and reasonable regulations, just and reasonable conduct and practices, and shall prevent unjust discrimination and undue preferences.

It shall not make or permit any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or particular description of traffic "in any respect whatsoever," nor shall it subject such persons, entities, localities, or particular descriptions of traffic, to any undue or unreasonable prejudice or disadvantage "in any respect whatsoever."

They must not only be just and reasonable so far as the matter of compensation is concerned, but must be further just and reasonable in all respects. They must exercise their power in a just and reasonable manner and arrive at their conclusions through just and reasonable processes, and those conclusions must be just and reasonable in all respects. They may not be unjust and unreasonable in any respect whatsoever. They cannot content themselves with arriving at a result technically and in terms and form just and reasonable through an arbitrary, unjust, and unreasonable exercise of their powers. Justness and reasonableness must permeate, tincture, and

characterize the entire proceeding, and the result must also be in truth, in spirit, and in fact just and reasonable, and not merely so in form and terms.

A rate may be unassailable on constitutional grounds, may be absolutely free from confiscatory features, and yet in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate commerce act.

A law passed in the interests of and to promote justness and reasonableness may not be used to perpetrate injustice and unreasonableness any more than the statute of frauds can be used as an instrument to perpetrate fraud.

172 For this reason there does inhere in the Federal courts of equity power to review rates made by the commission above and beyond constitutional questions and questions as to the technical limits of delegated power, and to inquire whether or not the delegated power has been exercised in a just and reasonable manner, and within the true spirit and intent of the law, and to relieve from such orders as, though not technically confiscatory or discriminatory and not technically beyond the terms of the statute, are nevertheless so inherently inconsistent, unjust, unreasonable, and violative of common right as to be on their face unjust and unreasonable orders in the common sense of the terms.

In the case of The Interstate Commerce Commission v. Illinois Central R. R. Co., decided by the Supreme Court January 10, 1910, Mr. Justice White uses the following language: "Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider, (a) all relevant questions of constitutional power and right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz, whether even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power."

In Louisville & Nashville R. R. Co. v. Interstate Commerce Commission, decided April 9, 1910, by the Circuit Court for the

173 Western District of Kentucky, the court used this language: "If the order were so unreasonable or so manifestly unjust as to induce the belief that the fundamental principles of rational justice had been disregarded * * * it would be our duty to prevent such a consequence by awarding an injunction." In Peavey & Company v. Union Pacific Railway Company, recently decided by the Judges of the Eighth Circuit, the court said: "The Interstate Commerce Commission is an administrative tribunal and the wisdom and

expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts. But the power is vested in and the duty is imposed upon the circuit courts to relieve from orders of the commission which * * * though in form within its delegated power evidence so unreasonable an exercise of it that they are in substance beyond it." In Stickney v. Interstate Commerce Commission, 164 Fed. 638, 644, 645, the court said: "The finding of facts on controverted and conflicting evidence by such bodies, when not brought about by fraud or mistake, is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded or established without dispute admit of but one legal conclusion and a different and erroneous one is reached by reason of a misconception and misapplication of law by such bodies, their action is subject to review and may and ought to be avoided by the courts."

These decisions do not mean that the courts may substitute their own opinion for that of the commission. They do mean, however, that whenever an order is so inherently inconsistent with and violative of the fundamental principles of rational justice as to clearly evince an arbitrary disregard for and perversion of the true spirit and intent of the interstate commerce act, it is an unlawful and unauthorized order, and one from which the courts have power and are bound to grant relief.

174 Applying the principles arrived at in the foregoing discussion to the facts exhibited in the record, I am compelled to the following conclusions:

There is no evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations.

It does, however, appear that they are very low rates, and unusually favorable to the shippers and to the public.

In restoring the superseded rates to the Pembina–Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point.

If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found) then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates.

The difficulties and expenses of transportation over the Union Pacific line and the northern lines are fairly equal. The route over the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates.

The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable.

If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly
175 prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferances to carriers and localities.

It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised.

These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5-cents per one hundred pounds differential to Chicago, while the northern lines are allowed 10 cents. And the 10-cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and
176 allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order.

In determining the issues before it the defendant ordered the rates from the coast territory to the so-called Pembina-Port Arthur line, and destinations west thereof, restored to the basis in existence immediately prior to November 1, 1907. To the territory east of that line it permitted an advance not to exceed 5 cents per hundred pounds over the rates in effect immediately previous to November 1, 1907. The defendant in this way presented the matter in a double aspect, and in the consideration of the questions involved in these cases, the master has followed the same course and will state his conclusions in that order, that is to say:

(1) Does the evidence justify or require that the orders of the defendant, restoring the rates in existence prior to November 1, 1907, on and west of the so-called Pembina-Port Arthur line shall be en-

joined; that is to say, does the evidence, giving to it all of the weight to which it is fairly entitled, overthrow the presumption that the orders in that regard are valid or, applying the test indicated by the recent decision of the Supreme Court of the United States in Interstate Commerce Commission v. Illinois Central Railroad Company, et al., — U. S. —, does the evidence establish that "the assertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power"?

(2) Turning to that portion of the orders setting aside the rates filed by the carriers and effective on November 1, 1907, to points east of the so-called Pembina-Port Arthur line, and in lieu thereof, permitting an advance over the preexisting rates not to exceed
177 5 cents per hundred pounds, and applying the same tests above referred to, are the results such as to lead to the necessary conclusion that the injunctive order of this court should issue?

Dealing with these questions in the order stated, it appears that in considering the conclusion reached by the defendant, the rate from the coast district to Omaha may be taken as illustrative.

The short-line distance from Portland to Omaha is stated by the commission in its decision in the so-called Oregon case (No. 1327) to be 1,799 miles. From the exhibits offered before the commission it appears that this is substantially correct, and the the 50-cent rate restored by the orders of the commission results in revenue of 5.56 mills per ton-mile. To Kansas City, another Missouri River point to which the same 50-cent rate applies, the distance appears to be 2,030 miles, with a resulting ton-mile earning of 4.92 mills. Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, it it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low. That is not the duty of this court, however, and the action of the commission in ordering these and all other rates to this so-called Pembina line restored, and thereby approving them as just and reasonable, is to be tested by the rules herein above referred to.

The revenue per ton-mile thus returned is much below the average revenue per ton-mile derived from all commercial business on the lines of either of the complainants. It is below the average revenue per ton-mile from lumber on the Union Pacific system for any of the recent years. It is substantially below average earnings
178 per ton-mile on numerous other commodities, many of which may be denominated low grade in their character, moved over the Union Pacific system from Portland and coast points to Omaha and other eastern terminals. In the opinion of witnesses produced by the carriers, including the freight traffic manager of the Union Pacific Railroad Company, this 50-cent rate is unreasonably low.

From what has been said above, it can not be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases, but it is the finding and conclusion of the master that the evidence upon this branch of the cases is not so clear and conclusive under the rules above referred to as to justify a recommendation that an injunction be issued against that portion of these orders.

The same finding and conclusion is reached regarding the rates, generally, to destinations on and west of the so-called Pembina-Port Arthur line. The master, therefore, recommends that the prayer for injunction against the orders of the defendant, disapproving the rates filed by the complainants to destinations on and west of the Pembina-Port Arthur line and requiring the restoration of the rates to these destinations in effect immediately prior to November 1, 1907, be denied.

In reaching its conclusion that the rates in question to Omaha and other points on the Pembina-Port Arthur line should be restored to the basis in effect just prior to November 1, 1907, it is to be presumed that the defendant acted under the authority delegated to it by the act to regulate commerce and the amendments thereto; it is to be presumed that thus acting under the delegated authority the defendant approved and established the preexisting rates as just and reasonable for the service involved. In fact, an examination of the opinions and orders of the defendant in these cases clearly shows that such was the judgment of the defendant. As already seen,
179 the defendant is without power to establish rates upon any other basis, and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved, the preexisting scale of rates to this line was in the opinion of the defendant just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative and we are, therefore, furnished in these cases, by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina-Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Commerce Commission v. Illinois Central Railroad Company et al., supra, is not presented. Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant.

This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just

and reasonable rate for a given distance, it can not be true in reason that for the same or a greater distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable.

180 In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distance may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines.

It is therefore not unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded.

It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive and marked conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between

181 Omaha and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in the coast territory, as well as the Spokane territory, on the other, should normally be upon an equal basis.

Thus the commission said in the case above cited: "There is no condition of construction or operation, or financial result, which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland, than is maintained

by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the eastbound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration.

The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion and the equal relation of rates of long standing referred to in the oral argument between
182 these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike.

Before the commission in these proceedings, the complaining shippers urged that there should be equal rates upon this lumber traffic from the coast to St. Paul and to Omaha. These shippers urged that the 40-cent rate in effect to St. Paul and Minneapolis prior to November 1, 1907, should be applied to Omaha and the Missouri River territory generally, and it is fairly to be inferred that this position was taken in accordance with a conviction that conditions commercial, as well as otherwise, were so alike as to require equal rates.

From the deliberate conclusion, however, reached by the defendant that the 50-cent rate was just and reasonable upon this traffic to Omaha it is plain that the 40-cent rate asked by the shippers could not be.

Is it, therefore, possible in view of these various considerations to support the order of the defendant requiring the Northern Pacific and the Great Northern lines to withdraw the 50-cent rate made applicable by the tariffs of November 1, 1907, to St. Paul and common territory and to install instead a rate of 45 cents?

As its reasons for permitting an advance east of the Pembina-Port Arthur line, the defendant said in the so-called Washington case (No. 1329): "To certain points farther east, involving longer hauls, it is believed that there was justification for some advance, in view of the less revenue per ton mile accruing to the carriers from this traffic."

The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pem-
183 bina-Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina-Port Arthur line and, as already shown, traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which, under the commission's orders, take the 45-cent rate,

is generally greater than the average distance between points where under the commission's orders the 50-cent rate applies.

The revenue per ton mile, however, according to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50-cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seem to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50-cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina-Port Arthur line seem to it to be of sufficient weight to authorize their
184 action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable.

Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50-cent rate in and of itself is in any wise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate.

The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience in railroad traffic affairs and these witnesses expressing their opinion and adding reasons therefor were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the preexisting rates, as well as the proposed rates and earnings therefrom, with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations

of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results while instructive as showing approximate or average results are not sufficiently close
185 to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars west bound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded.

A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates approved by the commission to points on and west of the Pembina-Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina-Port Arthur line on November 1, 1907, to be unjust and unreasonable can not be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant
186 itself, the orders in so far as they displace the rates contained in the tariffs of November 1, 1907, to points east of the Pembina-Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the preexisting rate, should be set aside and enjoined.

By the effect of the orders of the defendant finding the rates to points east of the Pembina-Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this

rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

A large amount of testimony appears in the record, much of which was before the defendant and some of which was added in the hearings before the master, relating to the circumstances and conditions under which the rates on lumber between St. Paul and similar points and Chicago and points on the Mississippi River, including St. Louis, have been in the past made and controlled. It is said, and seems amply supported by the proof, and that the rate of 10 cents from St. Paul to Chicago is made in competition with carriers of lumber
187 on the great lakes from Duluth to Chicago, and to some extent, so far as points on the Mississippi River are concerned, with carriers transporting lumber upon the Mississippi River. In the past it is probable that the lumber traffic on the Mississippi River had a larger effect upon the rates of the railroad lines competing therewith than at the present day, but from the history of the development of the lumber industry in the north is plain that the rail rates from northern points such as St. Paul and Duluth to Chicago and Mississippi Valley points to and including St. Louis, have always been and are to-day affected and held to a low basis by the various forms of water competition referred to. The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points can not be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicao must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. The 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied via lines
188 leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all or a portion of this rate out of the earnings accruing to them from the rate to Omaha.

In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the record to indicate that the addition of 10 cents to the rate of 50 cents, approved by the commission to Omaha, would be unjust or unreasonable for the transportation of this traffic from Omaha to Chicago. Considering all of the facts relating to the character of the 10-cent rate above referred to in its application between St. Paul and Chicago for the distance involved and under the condition disclosed in the record, it can not be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can be sustained, and for the various reasons hereinbefore referred to it is plain that this
189 rate, whether applied via St. Paul or via Omaha, neither was nor is unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago.

There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions generally affecting rates to all such destinations; in fact in the orders of the defendant permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina-Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina-Port Arthur line other than as above indicated.

In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants and effective November 1, 1907, to points east of the so-called Pembina-Port Arthur line to be unjust and unreasonable can not be approved; that the orders of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons can not be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the

rates contained in the tariff of November 1, 1907, in question, to points east of the so-called Pembina-Port Arthur line to be
190 unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof be set aside and annulled.

By the order in the so-called Potlatch case (No. 1346), which is one of the orders sought to be enjoined in these proceedings, the defendant fixed rates from points in eastern Washington, eastern Oregon, and Montana to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907.

In the submission of testimony and in the arguments before the master, the questions presented by these cases have been considered principally with regard to the rate on fir lumber. That rate has been treated by both complainants and defendant as typical, and it has been so accepted and treated by the master in the foregoing findings. The relation between that rate and the rates on other lumber, shingles, and other forest products to points east of the Pembina-Port Arthur line was the same previous to November 1, 1907, and in the tariffs made effective on that date; and the orders of the
191 commission left that relation unchanged. No question is made by either party as to the fairness of this relation. From the findings that the defendant's orders condemning the rates to November 1, 1907, on fir lumber to points east of the Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended.

In accordance with the foregoing conclusions the master recommends the entry of decrees in each of the said cases in the form hereto attached.

FREDERICK N. DICKSON,
Special Master.

ST. PAUL, MINN., *Aug. 27, 1910.*

(Endorsed:) Filed August 27th, 1910. Henry D. Lang, Clerk.

192 United States Circuit Court for the District of Minnesota. Third division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, *vs.* INTERSTATE COMMERCE COMMISSION.	Equity No. 885

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in that proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908; and the order of the defendant in that proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 27, 1908, and as further amended September 1, 1908; and the order of the defendant in that proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908, and the order of the defendant in that proceeding brought before it entitled Oregon and Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al., being I. C. C. No. 1327, dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908, and the order of the defendant in those two proceedings brought before it entitled Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1329, and Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1335, dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908, in so far as said orders or any of

193 them require the complainants herein to cease and desist from enforcing the rates prescribed by complainant's tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorhead and Breckenridge, Minnesota; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Missouri, and thence to Port Arthur, Texas, along the Kansas City Southern Railway be, and each of them hereby

is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
United States Circuit Judges.

194 Thereafter and on the same day the following order noting the filing of the master's report was entered in said cause, to wit:

195 United States Circuit Court, District of Minnesota, Third Division. Chancery Rule and Order Book.

GREAT NORTHERN RY. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 885. Equity.

Aug. 27th, 1910.

And now comes Frederick N. Dickson, the duly appointed special master in chancery in the above-entitled cause, and filed his report in the clerk's office of said court, under an order appointing him special master in chancery, which said filing is hereby entered and noted.

(Entered C. R. "C.," page 208.)

Thereafter and on the same day the following report of rulings upon exceptions and complainants' and defendant's exceptions was filed in said cause, to wit:

196 In the Circuit Court of the United States. For the District of Minnesota, Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

By order of the court above named, entered therein on the
197 13th day of February, 1909, the above-entitled causes were referred to the undersigned, as special master in chancery, to take and report to said court the evidence, to examine the same, to make necessary computations, to find and state the facts in said causes, and to report advisory conclusions of law and recommend a proper form of decree therein.

Pursuant to said order, the testimony in said causes was taken and has been returned and filed in said court. And after hearing arguments of counsel, and on consideration, the undersigned, as such special master, did, on the 22nd day of July, 1910, pursuant to the terms of said order, exhibit to counsel his preliminary report and delivered to them copies thereof.

Thereupon, upon stipulation of the parties, it was ordered that said respective parties file with the undersigned on or before the 19th day of August, 1910, their objections and exceptions to said preliminary report, if any they had; and upon the 19th day of August, 1910, the defendant in said causes filed with the undersigned exceptions, a true copy of which is hereto attached and marked Exhibit "A," and the complainants filed with the undersigned exceptions, a true copy of which is hereto attached and marked Exhibit "B."

After hearing arguments of counsel and upon consideration, the master rules as follows upon said exceptions:

Defendant's exception No. 1 is overruled for the reason that the matter therein excepted to is fully covered in the specific finding of fact No. IV, and the suggested finding of fact is partial and unfair.

Defendant's exception No. 2 is overruled. The difference between the finding and the suggested finding is one of degree, and in the master's judgment the finding excepted to is amply sustained by the evidence.

Defendant's exception No. 3 is overruled. The suggested
198 finding that at the time of the installation of the 40-cent rate it was not known whether there would be an empty east-bound car movement is not sustained by the evidence, and, under the circumstances existing at that time, is obviously untrue.

Defendant's exception No. 4 is allowed and the master's report modified accordingly.

Defendant's exception No. 5 is allowed and the master's report modified accordingly.

Defendant's exception No. 6 is overruled. The finding objected to is sustained by the evidence and the suggested finding is amply covered in other portions of the report.

Defendant's exception No. 7 is overruled, for the reason that it is not sustained by the evidence.

Defendant's exception No. 8 is overruled. The finding objected to is, in the master's judgment, amply sustained by the evidence and the suggested finding that there is no satisfactory explanation of the sharp and sudden decrease in the percentage of eastbound loaded car mileage over westbound car mileage in the year ending June 1, 1907, is not true. In the master's judgment the explanation was ample.

Upon argument, the defendant withdrew exception No. 9, objecting to the recital of the testimony of R. I. Farrington. The finding suggested in exception No. 9 is refused as not being sustained by the evidence.

Defendant's exception No. 10 is refused as not being sustained by the evidence.

Upon argument in reference to defendant's exceptions Nos. 11 and 12 it was agreed that the requirements of these exceptions would be met by inserting the percentages of dividends paid in recent years by the complainants' roads, and the master's report has been modified accordingly.

Defendant's exception No. 13 is overruled. To say that the 50-cent rate involved was not established by the order of the commis-
199 sion because it had theretofore been in effect, is a quibble. Upon the consideration of the case it was the commission's duty to prescribe the maximum rate for the future, and they did prescribe this rate and thereby established it.

Defendant's exception No. 14 is overruled. The finding objected to is amply sustained by the evidence.

Defendant's exceptions Nos. 15 to 24 inclusive are each and all of them exceptions to various findings of fact in the master's report, and are objected to on the ground that they are not sustained by the evidence or are immaterial. Each and all of these exceptions are overruled by the master for the reason that in his judgment they are all amply sustained by the evidence and are material and relevant.

Defendant's requested finding of fact No. 1 is refused on the ground that it is not sustained by the evidence.

Defendant's second requested finding of fact is refused on the ground that it is not sustained by the evidence.

Defendant's third requested finding of fact is refused. The application of a 45-cent rate referred to in the second paragraph is not as stated in said paragraph and the requested finding is not sustained by the evidence.

The defendant's fourth requested finding of fact is refused on the ground that it is immaterial and does not support the conclusion therein arrived at.

Defendant's fifth requested finding of fact is refused on the ground that it is not sustained by the evidence. While the master has found that the general net returns of the carriers have been fairly satisfactory, and has also found that there is no evidence in the case tending to show that the rates charged upon lumber were confiscatory, he has also found that the rates charged upon lumber were very low rates. The finding herein amounts to an affirmative finding that the carriers have been receiving adequate compensation for their
200 lumber traffic. In the master's judgment the evidence does not sustain such finding.

Defendant's sixth requested finding of fact is refused, because n sustained by the evidence.

Defendant's seventh requested finding of act is refused. While some of the statements therein contained are true, the finding, as a whole, is immaterial.

Defendant's eighth requested finding of fact is refused as immaterial and already covered by the findings of fact. The master has expressly found that there is no evidence showing the relation and effect of the lumber rate upon the general body of net returns.

Defendant has filed 37 specific exceptions to the master's conclusions of law, Numbered 1 to 37 inclusive, in which defendant takes exception to the conclusions which the master has arrived at in his report. All these various conclusions assailed by these exceptions are sufficiently explained in the master's report and said exceptions are each and all of them overruled for the reason stated in the report.

Exception No. 35 of the conclusions of law raises the question whether or not the court has the power to modify the commission's orders in the manner attempted in the decrees recommended herein, it being the contention of the defendant that the court has no power to do anything further than either to enjoin the commission's orders in toto, or sustain them in toto.

This exception is specifically overruled. The commission dealt with the rates in question in a two-fold manner, dividing their application by the so-called Pembina-Port Arthur line and applying a different rule to the territory east and west of said line. If this is a justifiable basis of division, the court has a right to deal with the matter on such basis.

Referring to complaintnt's exceptions, exception 1 is par-
201 tially allowed, and the master's report has been modified to the extent of limiting the period covered by said finding to a period beginning in the year 1901. Aside from this modification the exception is overruled.

Exception II is overruled. The master adheres to his original conclusions in this respect and thinks that the reasons for his position are sufficiently explained in his report.

Exception III is also overruled for the same reason.

Exception IV is also overruled for the same reason.

Exception V is also overruled for the same reason.

Exception VI is also overruled for the same reason.

Herewith the master files his final report of said causes, containing the modifications allowed hereinbefore.

Dated at St. Paul, Minn., this 27th day of August, 1910.

FREDERICK N. DICKSON,
Special Master in Chancery.

202 Exhibit A. In the Circuit Court of the United States, for the District of Minnesota, Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon, California Railroad Company, complainants,

v.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

Objections and exceptions taken by the above named defendant to the report of the special master herein, to whom these cases were referred to take proofs and report thereon.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant United States Atty.
Solicitors for Defendant.

203 Comes now the Interstate Commerce Commission, defendant in the above named cases, by its solicitors, and objects to the report of Hon. Frederick M. Dickson, special master herein, and excepts to the findings of fact and conclusions of law hereinafter set out.

1. For that the master erred in that part of his report, page 12, wherein he stated: "For the purpose of providing loads for the eastbound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul." The master should have found substantially as follows: "For the purpose of providing additional revenue and believing that 40 cents was reasonable compensation to begin with, the railroads installed the old 40-cent rate to St. Paul." (Rec., 1274, 1275.)

2. For that the master erred in the following statement, page 12: "The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry."

He should have found: "The lumber industry in the coast district has grown to enormous proportions and has become a prosperous industry." (Rec., 1045, et seq.)

3. For that the master erred in the statement of his finding of fact IV, page 15, wherein he stated: "The superseded rates were made voluntarily by the carriers in 1893, avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads and more particularly and immediately for utilizing an eastbound empty car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well defined eastbound empty car movement from the coast.

The master should have found: "The superseded rates were
204 made voluntarily by the carriers in 1893, as alleged at the hearing, for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads which would furnish adequate revenue under the circumstances. The 40-cent rate was first made by the Great Northern Railroad and was announced several months prior to the date when that railroad was opened for business from Seattle. At the time the 40-cent rate was established it was not known whether there would be an empty eastbound car movement." (Rec., 1274, 1275.)

4. For that the master erred in line 11, page 17, wherein he used the word "mills." He should have used the word "materials." (14 I. C. C., 4.)

5. For that the master erred in failing to insert after the word "feet," in line 15, page 17, the following: "Valued at the mills at $30,000,000.00." (14 I. C. C., 4.)

6. For that the master erred in the finding, page 19, first paragraph: "At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business."

The master should have found: "Even before the financial depression was felt on the Pacific coast, the lumber industry was greatly depressed and operations were largely decreased." (14 I. C. C., 7; Rec., 402.)

7. For that the master erred in failing to insert after the word "cent," line 3, page 21, the following: "At the time the 40-cent rate was established to St. Paul the empty-car movement was not a fact to be considered in making the rate." (Rec., 1274, 1275.)

8. For that the master erred in his finding, beginning line 4, page 22, as follows: "This sharp and sudden decrease in the percentage of eastbound loaded-car mileage over westbound loaded-car mileage in the year ended June 1, 1907, was, however, not normal:
205 but due to temporary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months."

The master should have found: "There is no satisfactory explanation of this sharp and sudden decrease in the percentage of eastbound loaded-car mileage over westbound car mileage in the year ending June 1, 1907. The complainants, however, advance the theory that it was occasioned in a large degree by the carriage of supplies for the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, to storms, snowfall, and excessive cold weather in the winter of 1906 and 1907. There is no

evidence as to the empty-car movement or the movement of east or westbound loaded cars during the years ending June 1, 1908, and June 1, 1909; nor is there any evidence as to the cost of handling, or the revenue resulting from handling the lumber traffic subject to the order complained of in these cases. The evidence to show these facts is all in the possession of the complainants." (14 I. C. C., 16, 33.)

9. For that the master erred in the following finding, beginning line 2 from the bottom of page 22: "This increase is fairly illustrated by the testimony of the witness, R. I. Farrington, relating to the cost of operation of the Great Northern road. He testifies: 'Taking the year 1895 as 100 per cent, the cost per freight-train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight-train mile was 207.7 of 1895. Of course, in 1907, it is more than twice what it was in 1895 per freight-train mile. Per freight-car mile, using 1895 as 100 per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895." (Equity rule 76.)

The master should have found instead thereof: "While the cost of operation has constantly increased, the economy of operation has kept pace therewith. The minimum carload of lumber has greatly increased, engines haul much heavier trains, roadbeds have been improved, so that the cost of hauling a single unit compared with the revenue therefrom is much less than in 1893." (Rec., 754, 761.)

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10—For that the master erred, Finding XV, page 23, line 20, in failing to insert after the word "industry" the following: "and other traffic." (Rec., 1441.)

11—For that the master erred, Finding XVI, page 23, in inserting in the last line on said page the word "Fairly."

12—For that the master erred in inserting the word "fairly," line 3, page 24.

13—For that the master erred in Finding XVII, page 24: "By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina-Port Arthur line was established."

That finding should have been: "By this order the rate of 50 cents per one hundred pounds, previously and for many years in effect, over the Union Pacific system to Omaha and Missouri River points on said Pembina-Port Arthur line was not disturbed." (14 I. C. C., 1 et seq.)

14—For that the master erred in the finding, line 19, page 24: "And that such revenue is far below the average revenue per ton mile on any of the complainants' roads, and that this 50-cent rate over this system to Omaha is a very low rate."

15—For that the master erred in the finding, line 25, page 24: "Omaha and St. Paul are on a parity as bases of through rates, and

are so considered by the commission and by rate experts." (See commission's decision in Spokane v. Northern Pacific Railway Company, decided June 7, 1910, 19 I. C. C., 162.)

16—For that the master erred in the finding, beginning last line, page 24: "This rate will undoubtedly result in a revenue to
207 the northern lines measurably less than the revenue yielded to the Union Pacific Line by the 50-cent rate to Omaha."

17—For that the master erred in inserting in line 25, page 25, the following: "While it is probable that."

18—For that the master erred in his finding, beginning line 1, page 26: "It is sufficient to say, that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results reached are not widely apart from those reached by the engineers of the railroad companies." (Rec., 781 et seq.)

The finding is upon a matter wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

19—For that the master erred in inserting in line 24, page 26: "And in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures."

20—For that the master erred in his finding, last paragraph, page 26: "Of the method made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved."

The finding is upon a matter wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

21—For that the master erred in the following finding,
208 page 27, third paragraph: "In the conclusion at which the master has arrived, it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds."

This finding is not supported by the evidence in the record.

22. For that the master erred in inserting the word "fair" in line 25, page 28.

23. For that the master erred in the following finding, last line, page 28: "Upon the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case,

the results from operation of either of these companies were in any degree excessive." (Rec., 646, 647, 14 I. C. C., 7.)

24. For that the master erred in the following finding, line 5, page 29: "On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames, 169 U. S., 522, and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions."

There is no evidence of original cost of construction, amount expended in permanent improvements, present cost of construction compared with original cost of construction, the probable earnings upon the rates complained of, or operating expenses probable during life of order.

209 Requested finding of fact.

The defendant objects and excepts to the failure of the special master herein to make each and every of the following findings of fact:

1. The rates provided for in the schedules to become effective November 1, 1907, were enjoined by the Circuit Court of the United States, having jurisdiction, and the same were never collected by the complainants herein. Shippers of lumber continued to pay the rates in effect prior to November 1, 1907, and no part of the revenues of the carriers were due to the increase in lumber rates provided for in November 1, 1907. (Complainant's brief, 3.)

2. The net returns per mile of railroad for each of complainants was much greater at the time of the hearing before the commission than they were ten years before. Freight-car capacities had greatly increased, much larger train tonnage was hauled, train crews handled much more tonnage, engine capacity had greatly increased, and much more than kept pace with the increased cost of labor or of construction. (Rec., 754, 761.)

3. The 50-cent lumber rate over the Union Pacific Railroad covers as a blanket rate all points from Medford, Oregon, 350 miles south of Portland to Cascade Locks, 45 miles east of Portland, the center of origin being 152 miles south of Portland; this rate covers as blanket rate all destination points from Brule, Nebraska, 350 miles west of Omaha to Omaha, the center of destination being 175 miles west of Omaha. The distance from the center of origin to center of destination is 1,676 miles. The per ton-mile rate for the average distance is 5.96 mills.

The 45-cent lumber rate over the Northern Pacific covers as a
210 blanket rate all points of origin from South Bend, Washington,
to , 143 miles east of Tacoma, the center of origin being
16 miles east of Tacoma; this rate covers as a blanket all points of

destination from Glendive, Montana, 676 miles west of St. Paul to St. Paul, the center of destination being 338 miles west of St. Paul. The distance from center of origin to center of destination being 1,558 miles. The per ton-mile rate is 5.78 mills. (Rec., 938, 1443.)

On all shipments to Chicago via Omaha upon which the rate is 55 cents the Union Pacific receives for its haul only 45 cents. On all shipments to Chicago via St. Paul on which the 55 cent rate applied the Hill lines received for the haul to St. Paul 45 cents.

4. Rates have been voluntarily put into effect and are now in effect from Spokane to Winnipeg over the Northern Pacific and the Canadian Northern and the Great Northern and the Canadian Northern of 37 cents per one hundred. Via the Northern Pacific the distance is 1,545 miles. Via the Great Northern, 1,356. From Bellingham, Washington, via the Northern Pacific to Winnipeg the distance is 2,094.3 miles, and the rate is 40 cents per one hundred pounds, out of which three cents is paid to the local road from Bellingham to Sumas Junction, 23.3 miles, leaving 37 cents to be divided between the Northern Pacific and Canadian Northern for 2,071 miles. The same condition prevails from points on the Tacoma and Eastern to Winnipeg, where out of a rate of 40 cents for a haul of 1,491 miles the Northern Pacific received as its share 36 cents. From Kendall, Washington, the rate via the Northern Pacific or Great Northern and Bellingham Bay and British Columbia Railroad, the first named carrier receives out of 40 cents, 37½ cents for a haul of 2,071 miles over the Northern Pacific and 1,817 miles over the Great Northern. (See Defendant's Brief, 272.) When these rates and distances are compared with a haul of 1,564 miles to Jamestown, North Da-
211 kota, on the Northern Pacific, and 1,896 miles to Minneapolis over the same road, and with substantially similar distances over the Great Northern upon which a rate of 45 cents has been prescribed by the commission, it would appear that the 45 cent rate is a very liberal rate for the carriers.

5. From a careful examination of all the evidence I find nothing of any importance showing, or tending to show, that the complainants herein are not receiving adequate compensation for the services which they rendered the public. Any injunction against the order of the commission will operate to increase the revenue of the complainants beyond anything they have yet received upon lumber traffic. No statement is made by complainants or any of their witnesses that if an injunction is granted, thereby increasing the revenue of the carriers, there will be any reduction on any other commodities or any class of traffic. Nothing save opinion evidence is given upon the question of remuneration of the particular rates here under investigation. The commission prescribed 45 cents as a reasonable rate for the haul to St. Paul and Minneapolis. Measured by this standard and by the rates charged upon lumber over the lines of these complainants and of other carriers, the rates prescribed by the commission in no sense are less than the carriers are entitled to.

6. The evidence does not disclose whether the conditions and circumstances surrounding the movement of traffic from the Pacific coast to Omaha are similar or dissimilar to those appertaining to the haul from Pacific coast points to St. Paul and Minneapolis, except the elevation is much greater over the Union Pacific than over the Great Northern and Northern Pacific. (Rec., 1023.)

7. The record fails to disclose the amount of the tonnage subject to the commission's order which is hauled by complainants. It does appear that during the year ending June 30, 1907, of the whole amount of tonnage hauled by the complainants, products of
212 the forest constituted on the Union Pacific 7.86 per cent, on the Northern Pacific 37.38 per cent, on the Great Northern 14.8 per cent. How much of this percentage is carried at rates prescribed by the commission does not appear. These percentages cover both State and interstate eastbound and westbound movement. The commission's order applies only to interstate eastbound. (14 I. C. C., 16.)

8. Lumber is a low-grade commodity, is loaded and unloaded by the shipper, requires but little service, loads far beyond the average per car and upon the whole is very desirable traffic. I find no evidence which shows or tends to show other than mere opinions of interested parties that lumber subject to the orders herein does not pay its fair proportion of the income which the complainants have or should have.

Conclusions of law.

Defendant objects and excepts to the following conclusions of law made by the special master herein:

1. For that the master erred in the 9th conclusion, page 31, wherein he stated the law as follows: "An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted."

2. For that the master erred in overruling each and every objection entered by defendant to the admission of evidence as shown on pages 39, 40, and 41 of volume 1, of the printed record herein.

3. For that the master erred in holding, line 18, page 42: "That the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy."

213 4. For that the master erred in holding, line 18, page 45: "It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws."

5. For that the master erred in holding, line 1, page 47, that there does inhere in the Federal courts of equity power to review rates made by the commission to determine "whether or not the delegated power has been exercised in a just and r'asonable manner."

6. For that the master erred in reaching the following conc'usions, paragraph 3, page 49: "It does, however, appear that they are very low rates and unusually favorable to the shippers and to the public."

7. For that the master erred in reaching the following conclusion, paragraph 4, page 49: "In restoring the superseded rates to the Pembina-Port Arthur line, including the old 50-cent rate over the Union Pacific System to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point."

8. For that the master erred in reaching the following conclusion, paragraph 5, page 49: "If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates."

9. For that the master erred in reaching the following conclusion, paragraph 6, page 49: "The difficulties and expenses of tranportation over the Union Pacific line and the Northern lines are fairly equal. The route over the Northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates."

214 10. For that the master erred in reaching the following conclusion, paragraph 7, page 49: "The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable."

11. For that the master erred in reaching the following conclusion, paragraph 8, page 49: "If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities."

12. For that the master erred in reaching the following conclusion, line 7, page 50: "It will be said that the 45 cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is

so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised."

13. For that the master erred in reaching the following conclusion, line 22, page 50: "These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5 cents per one hundred pounds differential to Chicago while the northern lines are allowed 10 cents. And the 10 cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order."

14. For that the master erred in the following conclusion, line 16, page 52: "Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low."

15. For that the master erred in reaching the following conclusion, line 6, page 53: "From what has been said above, it cannot be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases."

16. For that the master erred in reaching the following conclusion, beginning last line, page 53: "As already seen, the defendant is without power to establish rates upon any other basis, and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved, the pre-existing scale of rates to this line was in the opinion of the defendant just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative and we are, therefore, furnished in these cases by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina-Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme

Court in Interstate Commerce Commission v. Illinois Central Railroad Company *et al.*, *supra*, is not presented? Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant?"

17. For that the master erred in reaching the following conclusion, beginning line 27, page 54: "This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a great distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable."

18. For that the master erred in reaching the following conclusion, beginning first line, page 55: "In considering this branch of the case it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distances may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul via this line it is 2,052 miles,
and as an illustration of longer hauls to St. Paul, via this line,
217 the distance from Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines."

19. For that the master erred in reaching the following conclusion, beginning 20th line, page 55: "It is not therefore unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded."

20. For that the master erred in reaching the following conclusion, line 23, page 55: "It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between Omaha and St. Paul on the one hand, and the coast

territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the city of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in the coast territory, as well as the Spokane territory on the other, should nominally be upon an equal basis.

Thus the commission said in the case above cited:

There is no condition of construction or operation or financial result which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

218 21. For that the master erred in reaching the following conclusion, line 21, page 56: "While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the eastbound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration."

22. For that the master erred in reaching the following conclusion, line 29, page 56: "The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike."

23. For that the master erred in reaching the following conclusion, line 22, page 57: "As its reasons for permitting an advance east of the Pembina-Port Arthur line, the defendant said in the so-called Washington case (No. 1329): 'To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton mile accruing to the carriers from this traffic.'"

24. For that the master erred in reaching the following conclusion, line 29, page 57: "The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pembina-Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina-Port Arthur line and as already shown traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the northern

destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points
219 which, under the commission's orders take the 45 cent rate, is generally greater than the average distance between points where under the commission's orders the 50 cent rate applies."

25. For that the master erred in reaching the following conclusion, line 11, page 58: "The revenue per ton mile, however, accruing to the Great Northern and Northern Pacific lines, even under the 50 cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50 cent rate approved to that point. Under the 40 cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50 cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40 cent rate the revenue per ton mile was 3.98 mills, and under the 50 cent rate would be 5.27 mills. Under the 50 cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seems to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50 cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina-Port Arthur line seem to it to be of sufficient weight to authorize their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50 cent rate to St. Paul as just and reasonable."

26. For that the master erred in reaching the following conclusion, line 4, page 59: "Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50 cent rate in and of itself is in anywise unjust or unreasonable to appled to this traffic to St. Paul and points taking the same rate."

220 27—For that the master erred in reaching the following conclusion, line 12, page 59: "The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience in railroad traffic affairs and these witnesses, expressing their opinion and adding reasons therefor, were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the pre-existing rates, as well as the proposed rates and earnings therefrom, with lumber rates from

other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results while instructive as showing approximate or average results are not sufficiently close to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars westbound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded."

28—For that the master erred in reaching the following conclusion, line 12, page 60: "A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this
221 subject by the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates approved by the commission to points on and west of the Pembina-Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line, and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina-Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders in so far as they displace the rates contained in the tariffs of November 1, 1907, to points east of the Pembina-Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the pre-existing rate, should be set aside and enjoined."

29—For that the master erred in reaching the following conclusion, line 6, page 61: "By the effect of the orders of the defendant finding the rates to points east of the Pembina-Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1,

1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

222 30. For that the master erred in reaching the following conclusion, line 12, page 62: "The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points cannot be supported, it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved, and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. This 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents, whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there

is anything in the records to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha would be unjust or unreasonable for the transportation of this traffic
223 from Omaha to Chicago. Considering all the facts relating to the character of the 10-cent rate above referred to in its application between St. Paul and Chicago, for the distance involved and under the conditions disposed in the record, it cannot be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha, the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can be sustained, and for the various reasons hereinbefore referred to it is plain that this rate, whether applied via St. Paul or via Omaha, neither was nor is unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago."

31. For that the master erred in reaching the following conclusion, line 6, page 64: "There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions generally affecting rates to all such destinations; in fact, in the orders of the defendants permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina-Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair, and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina-Port Arthur line other than as above indicated."

32. For that the master erred in reaching the following conclusion, line 19, page 64: "In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants, and effective November 1, 1907, to points east of the so-called Pembina-Port Arthur line, to be unjust and unreasonable cannot be approved;
224 that the orders of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons cannot be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points east of the so-called Pembina-Port Arthur line, to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof, be set aside and annulled."

33. For that the master erred in reaching the following conclusion, line 4, page 65: "By the order in the so-called Potlatch case (No. 1348), which is one of the orders sought to be enjoined in these proceedings, the defendants fixed rates from points in eastern Washington, eastern Oregon and Montana, to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined, in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907."

34. For that the master erred in reaching the following conclusion, line 2, page 66: "From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of the Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line and it is so recommended."

225 35. Defendant objects and excepts to the proposed decree of injunction for that the same is a modification of the commission's order, while the statute does not confer upon the court power to act other than upon the order as a whole by enjoining, suspending, or sustaining the same in toto.

36. For that the master erred in recommending entries of decrees of injunction in each of the said cases in the form used in said report.

37. For that the master erred in failing to recommend decrees dismissing the bills of complainant in each of the said causes.

Wherefore, defendant by its solicitors respectfully prays that in all of which particulars herein set out the report be varied and altered so as to conform to the facts and the law applicable thereto.

LUTHER M. WALTER,
CHARLES C. HOUPT,
Solicitors for Defendant.

J. N. TEAL,
W. A. WIMBISH,
Of Counsel.

226 Exhibit B. In the Circuit Court of the United States, for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., *vs.* THE INTERSTATE COMMERCE COMMISSION.	In Equity. No. 883.
NORTHERN PACIFIC RAILWAY COMPANY et al., *vs.* THE INTERSTATE COMMERCE COMMISSION.	In Equity. No. 884.
GREAT NORTHERN RAILWAY COMPANY et al., *vs.* THE INTERSTATE COMMERCE COMMISSION.	In Equity. No. 885.

Complainants' Exceptions to Master's Report.

Come now the complainants and make the following exceptions to the report of the master dated July 22, 1910:

I. They except to that finding and conclusion of the master, appearing on page 13 of the report as printed, reading as follows: "It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements and in addition thereto have accumulated large surplus funds."

And to that finding and conclusion of the master, appear-
227 ing on pages 23 and 24 of the printed report, reading as follows: "During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surpluses, and clearly appear to have been on the whole prosperous, and to have earned fairly satisfactory net incomes from their transportation," upon the ground that it appears from the testimony that the earnings of the Northern Pacific Railway Company and of the Great Northern Railway Company during the periods referred to in said findings have not yielded a fair return upon the fair value of the property of said companies devoted to railroad uses. The evidence further shows that the properties of the Northern Pacific Company were in an insolvent condition and in the hands of receivers during a portion of the time down to the year 1896, and that the properties of the Union Pacific system were likewise insolvent and in receivers' hands during a portion of the time down to the year 1898.

The evidence showing the cost of reproduction of the Great Northern Railroad system contained in complainants' Exhibit 15, Hoge-

land, page 435, printed transcript of record; the evidence showing the value of the Great Northern system computed upon average market price of stocks and bonds for the period of five years ended June 30, 1908, introduced in evidence under stipulation and printed in complainants' reply brief, page 51, and complainants' Exhibit "A," Great Northern, at pages 653 to 664, inclusive, of printed transcript of record, showing gross earnings, operating expenses, taxes, net earnings and net income from operation, show that the net earnings upon the fair value of the properties of that company for the years 1904 to 1908, both inclusive, to have been less than a fair return upon the value of such properties.

228 The findings of the cost of reproduction of the Northern Pacific Railway Company, appearing in complainants' Exhibit 4, pages 116 to 135 of record, and the findings of the value of the property computed upon the basis of the average market value of bonds and stocks of said company for a period of five years, introduced in evidence by stipulation and printed on page 52 of complainants' reply brief, and the findings as to the earnings of said property during the entire period from its reorganization in 1896 down to and including the fiscal year 1909, appearing in complainants' Exhibit 22, page 595 of printed transcript of record, showing that the earnings from said property during the said period had not yielded a fair return upon the fair value thereof.

II. They except to that finding and conclusion of the master appearing on page 14 of the printed copy of the report, reading as follows: "The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them we think this evidence so remote and speculative as to be absolutely immaterial in this case."

And further except to paragraphs 5 and 6 of the conclusions of law upon page 30 of the printed copy of the report, reading as follows: "(5) But where the question under consideration is the

229 justness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant. (6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question

of the justness and reasonableness of a single rate." For the reason that the master erred as a matter of law in holding that the evidence of the cost of reproduction of the Northern Pacific and Great Northern systems is so remote and speculative as bearing upon the particular rate as to be immaterial. The master erred in holding that upon the evidence thus introduced a finding based thereon would be merely a guess. The master erred in holding that the cost of reproduction of said properties was so remote and speculative as to be immaterial in determining the ultimate fact of the real value of said properties.

III. They except to that finding and conclusion of the master appearing on page 21 of the printed copy of the report, reading as follows: "Ever since 1903 the condition in respect to the predominance of empty car mileage has been changing until in 1907 the westbound empty car movement greatly predominated over the eastbound empty car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East." For the reason that, as shown in Great Northern Exhibit 27, page 613, and Maguire Exhibit 3, page 1485, and in Northern Pacific Exhibit 25, at page 604, all in the printed transcript of record, it appears that almost the
230 entire volume of east-bound tonnage consisted of lumber and shingles during the year 1907.

IV. They except to those findings and conclusions of the master appearing on page 30 of the printed copy of the report reading as follows: "(2) The Constitution guarantees just compensation for private property devoted to a public use, and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable. (3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation cannot be predicated upon it," and to those findings and conclusions of the master, appearing on pages 42 and 43 of the printed copy of the report, reading as follows: "In other words, confiscation cannot be predicated upon a single rate in and of itself, particularly because it is impossible to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns."

And to that finding and conclusion of the master appearing on page 44 of the printed copy of the report, reading as follows: "It seems clear, therefore, that in cases involving a single rate,
231 such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out," upon the ground that the master erred as a matter of law in finding and holding that a carrier is only entitled under the Constitution and the act to regulate commerce to just compensation for the entire use of all its property, and that a particular rate need not in and of itself furnish just compensation for the particular service rendered; and further erred as a matter of law in holding that confiscation under the provisions of the Constitution cannot be predicated upon a single rate unless the reduction in that rate so affects the general body of net returns as to reduce the net returns as a whole below what is just and reasonable, for the reason that under the provisions of the Constitution and the limitations of power upon the Interstate Commerce Commission, as contained in the act to regulate commerce, the commission is without power to establish any rate or rates for transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all the circumstances relating to that service is just and reasonable.

V. They except to that finding and conclusion appearing on page 44 of the printed copy of the report reading as follows: "The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost."

232 And to that finding and conclusion, appearing on page 49 of the printed copy of the report, reading as follows: "There is not evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations," for the reason that complainants have not conceded that the rates on lumber fixed by the orders of the commission involved herein were not confiscatory, and for the further reason that there is ample evidence in the record from which it clearly and persuasively appears that the rates fixed by the orders of the commission in controversy here are confiscatory. The evidence of the witness, James J. Hill, at pages 1267, 1276, 1278, 1280, 1288, 1294, and 1298 in the printed transcript of the record; the evidence of the witness, Howard Elliott, at pages 1372 to 1374, inclusive, therein; the evidence of the witness, J. G. Woodworth, at pages 3883 to 3891, inclusive, therein; the evidence of the witness, James A. Munroe, at page 306 and at pages 352, 264, 365; the evidence of the witness, J. G. Woodworth, at page 1475; the evidence of Dwight C. Morgan

at pages 800, 863; Woodworth Exhibit 1, page 1443; Woodworth Exhibit 2, page 1447; Maguire Exhibit 3, page 1485; R. B. Miller Exhibit 2, page 1500; Miller's statement, page 1512; Union Pacific statement, page 353; evidence of the witness, R. I. Farrington, page 1602, and following, and evidence of witness, James J. Hill, page 1280, clearly shows that the rates fixed by the orders of the commission complained of herein are confiscatory.

VI. The complainants further except to the finding and conclusion of the master denying the prayer for an injunction against the orders of the commission disapproving the rates filed by the carriers in their tariffs of November 1, 1907, to points on and west of the
233 so-called Pembina-Port Arthur line and in lieu thereof requiring the restoration of the rates previously in effect to points on and west of said line for the reason in exception number V that the evidence conclusively shows that the rates established by the carriers in the tariffs of November 1, 1907, to points on and west of said Pembina-Port Arthur line were neither unjust nor unreasonable, and conclusively shows that the rates ordered restored by the orders herein complained of were and are unjust, unreasonable, and confiscatory.

The complainants therefore pray that the report in the matters hereinbefore excepted to be modified and made to conform to the law and the proof contained in the record.

HALE HOLDEN,
F. C. DILLARD,
H. A. SCANDRETT and
CHARLES DONNELLY,
Solicitors for Complainants.

(Endorsed:) Filed August 27th, 1910. Henry D. Lang, Clerk.

234 Thereafter and on October 1st, 1910, the following order fixing master's report was filed and entered in said cause, to-wit:

235 United States Circuit Court. District of Minnesota. Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railroad Company, Great Northern Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

236 By orders of this court made one in each of the above entitled causes, on the 13th day of February, 1909, Frederick N. Dickson, of St. Paul, Minnesota, was appointed special master in chancery, in each of said causes, and empowered and directed to take and report to the court the evidence therein; to examine the same; to make all necessary computations; to find and state the facts in said causes, and to report advisory conclusions of law, and recommend a proper form of decree herein;

And the said master having heard said causes, the same having been tried before him together, and having on the 22nd day of July, 1910, served upon the respective parties to said causes a preliminary report of his conclusions and recommendations therein, and having on the 19th day of August, 1910, heard and considered the exceptions of the respective parties to said causes to said report and recommendations, and having thereafter, on the 27th day of August, 1910, filed his final report of said causes and recommendations therein;

Now, upon consideration, it is ordered that the compensation of said special master for his services in said three causes (including $200.00 expense sustained by him) be, and it is hereby fixed and allowed at, the sum of four thousand ($4,000.00) dollars, to be distributed pro rata between said causes.

Dated this 28th day of September, 1910.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order fixing master's compensation. Filed October 1st, 1910. Henry D. Lang, clerk.

237 Thereafter, and on October 1st, the following exceptions of defendant to master's final report were filed in said cause, to-wit:

238 In the Circuit Court of the United States for the District of Minnesota. Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon, California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

Exceptions of defendant to master's final report.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant United States Attorney.
J. N. TEAL,
W. A. WIMBISH.
Of Counsel.

Now comes defendant, Inter-state Commerce Commission, by its solicitors, and excepts to the final report of the special master filed herein on the 27th day of August, 1910, upon each and every ground set out in the objections and exceptions of this defendant filed with

the master on the 17th day of August, 1910, set out in Exhibit
239 A accompanying the printed report of the master at pages 73 and 96, both inclusive.

In further support of said exceptions so presented to and filed with the master, thos defendant respectfully submits the following:

(a) Referring to exception No. 3 (pp. 74, 75, of the master's report), the master should have found and declared that the 40-cent rate to St. Paul was established by the Great Northern Railway Company, upon its completion to the coast in 1893, for the purpose of securing traffic and because it was believed and declared by the officials of the said railway company that this rate was reasonable and just and would afford the carrier fair remuneration for the services rendered; and the fact that there was or probably would be an empty east-bound movement of cars was not considered or offered as a reason for making the rate. (Trans., pp. 1274–75.)

The master should have further found that the Northern Pacific Railway Company joined in this rate because it was forced to do so by competition, and not because of the existence of an east-bound empty car movement.

(b) Referring to exception No. 14 (p. 77 of the master's report), the master should have found and declared that while the rate per ten mile for the haul of lumber from coast points to Omaha, under the 50-cent rate, was less than the average rate per ten mile on all traffic of the complainant roads, it afforded full compensation for the service performed, and was not out of line with the rates upon other traffic, in view of the length of haul, the volume of the movement, and the character of the commodity.

(c) Referring to exception 15 (p. 77 of the master's report), the master should have found and declared that Omaha and St. Paul are
240 not on a party as bases for the rates for the haul of lumber from Pacific Coast points; that many years ago the carriers established a differential of 20 cents a hundred pounds as between Omaha and St. Paul because of the greater market competition at St. Paul, which was then the center of a large lumber-producing region; that as this competition relaxed the differential was decreased, until under the tariffs of November 1, 1907, it was made 5 cents a hundred pounds; that the Interstate Commerce Commission in its report and order did not disturb but recognized and retained this differential in the rates prescribed; and that the difference in market competition existing at St. Paul justified the carriers in fixing the differential of 5 cents under Omaha.

The defendant prays that the said exceptions be sustained by the court; that the findings and conclusions of the master excepted to be reversed; and that the original and amended bills of the complainants in said causes be dismissed.

CHARLES C. HOUPT,
United States Attorney.
JOEL M. DICKEY,
Assistant United States Attorney.

(Endorsed:) Defendant's exceptions to master's report. Filed October 1st, 1910. Henry D. Lang, clerk.

241 Thereafter, and on the 15th day of September, 1910, the following record of hearing upon the exceptions was entered of record in said cause, to-wit:

242 United States Circuit Court for the District of Minnesota.
Third Division.

Term minutes: June term. A. D. 1910. September 15, 1910. Thursday morning. Court opened pursuant to adjournment. Present: Hon. Walter H. Sanborn, Hon. Willis Van Deventer, Hon. William C. Hook, circuit judges; Henry D. Lang, clerk.

Union Pacific Ry. Co., Oregon Short Line R. R. Co., Oregon R. R. & Navigation Co., Southern Pacific Co., Northern Pacific Ry. Co., Great Northern Ry. Co., Chicago, Burlington & Quincy R. R. Co., and Oregon & California R. R. Co., complainants, *vs.* The Interstate Commerce Commission, defendant.	No. 883. Equity.
Northern Pacific Ry. Co., Great Northern Ry. Co., Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., Oregon Short Line R. R. Co., and Oregon R. R. & Navigation Co., complainants, *vs.* The Interstate Commerce Commission, defendant.	No. 884. Equity.
Great Northern Ry. Co., Northern Pacific Ry. Co., Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., Oregon Short Line R. R. Co., Oregon R. R. & Navigation Co., complainants, *vs.* The Interstate Commerce Commission, defendant.	No. 885. Equity.

This day come the parties to these causes by their respective solicitors, Mr. Hale Holden appearing on behalf of the complainants, and Messrs. Luther M. Walter, J. N. Teal, and W. A. Wimbish appearing on behalf of the defendant, and the said cause having been heretofore by order duly made and entered set down for hearing at this time and place, upon the exceptions of the complainants and
243 defendant to the Special Master in Chancery's Report herein, the same now coming on.

Mr. Hale Holden opens and argues the said exceptions on behalf of the complainants.

Mr. Luther M. Walter opens, stated, and argues the exceptions on behalf of the defendant.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. Luther M. Walter resumes and concludes his argument upon said exceptions on behalf of the defendant.

Mr. W. A. Wimbish argues upon the said exceptions on behalf of the defendant.

Mr. J. N. Teal argues in conclusion upon said exceptions on behalf of the defendant.

Mr. Hale Holden argues in reply and conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties hereto upon said exceptions to the special master's report the same are duly submitted to and by the court taken under advisement.

Ordered: That this court do now adjourn until to-morrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

244 Thereafter and on October 10th, 1910, the following decision overruling exceptions was filed and entered in said cause, to wit:

245 United States Circuit Court. District of Minnesota. Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington & Quincy Railroad Co., and Oregon and California Railroad Company, complainants. *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANTS.	No. 883. Equity.
NORTHERN PACIFIC RAILWAY CO., GREAT NORTHern Railway Company, Chicago, Burlington & Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., & Oregon Railroad and Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884. Equity.

GREAT NORTHERN RAILWAY CO., NORTHERN PACIFIC RAILWAY CO., CHICAGO, BURLINGTON & QUINCY RAILROAD CO., UNION PACIFIC RAILROAD CO., OREGON SHORT LINE RAILROAD CO., OREGON RAILROAD AND NAVIGATION CO., AND SOUTHERN PACIFIC CO., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885. Equity.

All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty-cent rate on lumber to St. Paul and other points east of the Pembina Line was arbitrary, so palpably unjust and unreasonable and so discriminatory that it was beyond the power of the commission, are overruled on the ground that this action of the commission was beyond its power or so palpably and gravely unjust and unreasonable as to be beyond the substance if not beyond the form of its power, and upon the authority of Interstate Commerce Com. vs. Ill. Cent. R. R. Co., 30 Sup. Ct. Te., 155; C. M. & St. P. Ry. Co. vs. Minnesota, 134 U. S.,
246 418–452–456–457; Mo., Kansas, Texas R. R. Co. et al. vs. I. C. C. 164 Fed., 645; F. H. Peavey & Co. vs. U. P. Ry. Co., 176 Fed., 409–418–422.

Let orders, therefore, be entered overruling the exceptions to the special master's report, and let the proposed decrees be entered.

(Endorsed:) Decision overruling exceptions and direction. Decrees to be entered. Filed Oct. 10, 1910. Henry D. Lang, clerk.

Thereafter and on the 11th day of October, 1910, the following order overruling exceptions was filed in said cause, to wit:

247 United States Circuit Court for the District of Minnesota.
Third Division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, OREGON RAILROAD AND NAVIGATION COMPANY, AND SOUTHERN PACIFIC COMPANY.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 885. Equity.

Whereas an order was duly entered herein on the 30th day of July, A. D. 1910, settin*f* the exceptions of the complainants and defendant to the report of the special master in chancery, and the form of decree recommended and proposed by him, which said report and proposed decree were duly filed herein on the 27th day of August, A. D. 1910, down for hearing on the 15th day of September, A. D.

1910, and the same having been on that day duly heard, argued, and submitted to and by the court taken under advisement.

Now, after due consideration thereof, it is by the court ordered, adjudged, and decreed that all of the exceptions of the complainants and defendant and of each of them be and they hereby are overruled, and it is further ordered that the report of the special master in chancery as filed herein be and the same hereby is in all things approved and confirmed and that the decree recommended by the said special master be and the same hereby is approved and accordingly that the same be entered.

WILLIS VAN DECANTER,
WALTER H. SANBORN,
WILLIAM C. HOOK,
U. S. Circuit Judges.

(Endorsed:) Order overruling exceptions to master's report. Filed Oct. 11, 1910. Henry D. Lang, clerk.

248 Thereafter and on October 13th, 1910, the following decree was filed and entered in said cause, to wit:

249 In the Circuit Court of the United States for the District of Minnesota. Third Division.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

This cause came on to be heard at this term and was argued by counsel and thereupon upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in that proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908; and the order of the defendant in that proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 27, 1908, and as further amended September 1, 1908; and the order of the defendant in that proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in that proceeding brought before it entitled Oregon and Washington Lumber Manufacturers' Association et al.

v. Union Pacific Railroad Company et al., being I. C. C. No. 1327, dated June 2, 1908, as amended July 27, 1908, and as further
250 amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in those two proceedings brought before it entitled Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1329, and Southwest Washington Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1335, dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908, in so far as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorhead and Breckenridge, Minnesota; Sioux City and Council Bluffs, Iowa; St. Joseph and Mansas City, Missouri; and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
United States Circuit Judges.

(Endorsed:) Filed October 13th, 1910. Henry D. Lang, clerk.

251 Thereafter and October 17th, 1910, the following stipulation for costs was filed in said cause, to wit:

252 In the Circuit Court of the United States for the District of Minnesota, Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

Stipulation.

It is stipulated that the following items of disbursements made by the complainants in the above-entitled causes were disbursements necessarily made therein and that they may be taxed as costs in favor of said complainants, the amounts named below to be apportioned pro rata between said causes, or, in other words, one-third to each cause:

253

1908.			
Dec.	17.	Paid Henry D. Lang, clerk, U. S. Circuit Court, Saint Paul, for serving chancery subpœna	3.00
1909.			
Nov.	6.	Paid Robt. S. Taylor, Saint Paul, for record of testimony and proceedings	1,413.00
Jan.	18.	Paid Henry D. Lang, clerk, U. S. Circuit Court, Saint Paul, for additional deposit	10.00
1910.			
April	15.	Paid Gunthrop-Warren Printing Company for printing record	2,948.00
Mar.	1.	Paid Henry D. Lang, clerk, U. S. Circuit Court, Saint Paul, for additional deposit	30.00
Aug.	6.	Paid Review Publishing Company, Saint Paul, for printing master's report	50.25
Sept.	3.	Paid Gunthrop-Warren Printing Company for reprint of master's report, with exceptions and rulings thereon	94.50

Oct. 7.	Paid Frederick N. Dickson, special master, compensation for his services as per agreement of parties and order of court	4,000.00
	Total	$8,548.75
	To fees of H. Lee, crier, Chicago, 8 days at $2.50 per day, as per stipulation filed Mar. 11, 1910	20.00
		8,568.76

F. C. DILLARD,
HALE HOLDEN,
CHAS. DONNELLY,
Solicitors for Complainants,
LUTHER M. WALTER,
Solicitor for Defendant.

To amount brought forward	$8,568.75
Deduct therefrom deposits for costs	40.00
	8,628.75
One-third thereof under the stipulation apportioned to this case	2,842.92
To clerk's fees in this cause	21.00
To making chancery final record	101.55
	$2,965.47

Costs taxed at $2,965.47 this 17th day of October, A. D. 1910.
HENRY D. LANG, *Clerk.*

(Endorsed:) Stipulation of or taxation of costs. Filed, October 17th, 1910. Henry D. Lang, clerk.

254 And thereafter on the same day the following judgment for costs was entered of record in said cause, to wit:

255 United States Circuit Court for the District of Minnesota.
Third Division.

Term minutes June term. A. D. 1910. October 17th, 1910.
Monday morning. Court opened pursuant to adjournment.
Present: Hon. Walter H. Sanborn, circuit judge; Hon. Charles A. Willard, judge; Henry D. Lang, clerk.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company
vs.
THE INTERSTATE COMMERCE COMMISSION.
} No. 885. Equity.

In accordance with the final decree entered herein on the 13th day of October, 1910, and the stipulation of the solicitors for the respective parties hereto this day filed herein, it is by the court ordered, adjudged, and decreed that the Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, the complainants herein, do have and recover of and from the Interstate Commerce Commission, the defendant herein, their costs and disbursements in this action this day taxed and allowed at the sum of two thousand nine hundred sixty-fice dollars and forty-seven cents ($2,965.47), and that they have execution therefor.

Ordered, That this court do now adjourn until to-morrow morning at ten o'clock.

A true record.

Attest: HENRY D. LANG, *Clerk*.

256 Thereafter and on the same day the following appeal papers were filed in said cause, to-wit: Assignment of errors and prayer for reversal. Petition for appeal. Order allowing appeal. Præcipe for return to U. S. Supreme Court. Original citation and proof of service thereof.

257 In the Circuit Court of United States for the District of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, defendant.	No. 885.

Assignment of Errors.

Now comes the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the District of Minnesota, and Luther M. Walter, special assistant to the United States attorney, and charges that in the order and decree rendered by said Circuit Court for said district in the above-entitled cause on the tenth day of October, 1910, wherein and whereby said court suspended the order of the Interstate Commerce Commission, as therein shown, and restrained and enjoined the enforcement of the same, and in the record and proceedings therein, there is manifest error to its injury, in this, to wit:

1. Said Circuit Court erred in not dismissing the bill and amended bill of complaint for want of equity.

2. Said Circuit Court erred in not dismissing complainants' bill and amended bill for want of jurisdiction.

3. Said Circuit Court erred in holding that the said order of the commission was erroneous and unlawful and beyond the power of the commission to make.

4. Said Circuit Court erred in ordering that said order of the commission be suspended, set aside and held for naught and its attorneys, agents, and employes be restrained and enjoined from enforcing the same.

5. Said Circuit Court erred in suspending, annulling, and holding void said orders of the said commission.

Wherefore the Interstate Commerce Commission prays that
258 the decree of said Circuit Court rendered on the tenth day of October, 1910, be reversed, and that said Circuit Court be ordered to enter a decree dismissing the amended petition or bill of complaint in the above-entitled cause by said complaint against said Interstate Commerce Commission.

CHAS. C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant to the United States Attorney.

(Endorsed:) Assignments of error and prayer for reversal. Filed October 17, 1910. Henry D. Lang, Clerk.

259 In the Circuit Court of United States for the district of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, defendant.	No. 885.

Petition for appeal.

The Interstate Commerce Commission, by Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, being thereunto duly authorized, represents that in the decree or order of said circuit court, in the above entitled case, rendered on the tenth day of October, 1910, there is manifest error to its injury, and therefore prays for an order granting appeal from said decree to the Supreme Court of the United States.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Asst. to the United States Attorney.

(Endorsed:) Petition for appeal. Filed October 17, 1910. Henry D. Lang, clerk.

260 In the Circuit Court of the United States for the district of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants.
vs. No. 885.
INTERSTATE COMMERCE COMMISSION, defendant.

Order allowing appeal.

In this cause, the Interstate Commerce Commission by the Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the tenth day of October, 1910, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of $2,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 11th day of November, 1910.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order allowing appeal. Filed October 17, 1910. Henry D. Lang, clerk.

261 Circuit Court of the United States, District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainant,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885.

To the clerk of the above named court:

Please make a return upon the appeal to the United States Supreme Court, and include therein all the files and records in this cause.

Dated St. Paul, Minnesota, Charles C. Houpt.

CHAS C. HOUPT,
U. S. Atty.
LUTHER M. WALTER,
Atty., Complainants' Solicitors.

(Endorsed:) Praecipe for Return. Filed October 17, 1910. Henry D. Lang, clerk.

262 United States of America. Circuit Court. Eighth Circuit.

Citation.

United States of America. To Great Northern Railway Company et al., greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at the Capitol in the city of Washington, D. C., thirty days from and after the date this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. Circuit Court for the district of Minnesota, third division, wherein the Interstate Commerce Commission is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said petition mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said court, this 17th day of October, A. D. 1910.

WALTER H. SANBORN,
Judge of said Court.

Due service of the foregoing citation by copy at St. Paul, Minnesota, is hereby admitted this 17th day of October, A. D. 1910.

F. C. DILLARD,
HALE HOLDEN,
CHARLES DONNELLY,
Solicitor for Appellees.

263 (Endorsed:) Entered 885, Eq. No. 885 Equity.
United States Circuit Court, district of Minnesota. Third division. Great Northern Railway Co. vs. The Interstate Commerce Commission, defendant. Citation.
Filed Oct. 17, 1910. Henry D. Lang, clerk.

264 Thereafter and on the same day the following stipulation as to record upon appeal was filed in said cause, to wit:

265 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY, ET AL., complainant, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 884. Equity.
GREAT NORTHERN RAILWAY COMPANY, complainant, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

It is stipulated and agreed by and between the parties hereto that the clerk of this court, in preparing the records for transmission to

the Supreme Court of the United States, shall not include the record in each of these two cases, it being in each case a duplicate of that being set forward in the case of the Union Pacific Railway Company et al. versus The Interstate Commerce Commission, No. 883. The Supreme Court in passing upon the appeal in each of the said cases may use the record in Number 883 as the record in all three of said cases.

F. C. DILLARD,
Solicitor for Complainant.
HALE HOLDEN,
Solicitor for Complainant.
CHARLES DONNELLY,
Solicitor for Complainant.
CHARLES C. HOUPT,
Solicitor for Defendant.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation as to record upon appeal. Filed October 17, 1910. Henry D. Lang, clerk.

266 United States of America. Circuit Court of the United States—District of Minnesota. Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable, the Supreme Court of the United States, that the foregoing, consisting of 266 pages, numbered consecutively from 1 to 266, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause except the original bill of complaint, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

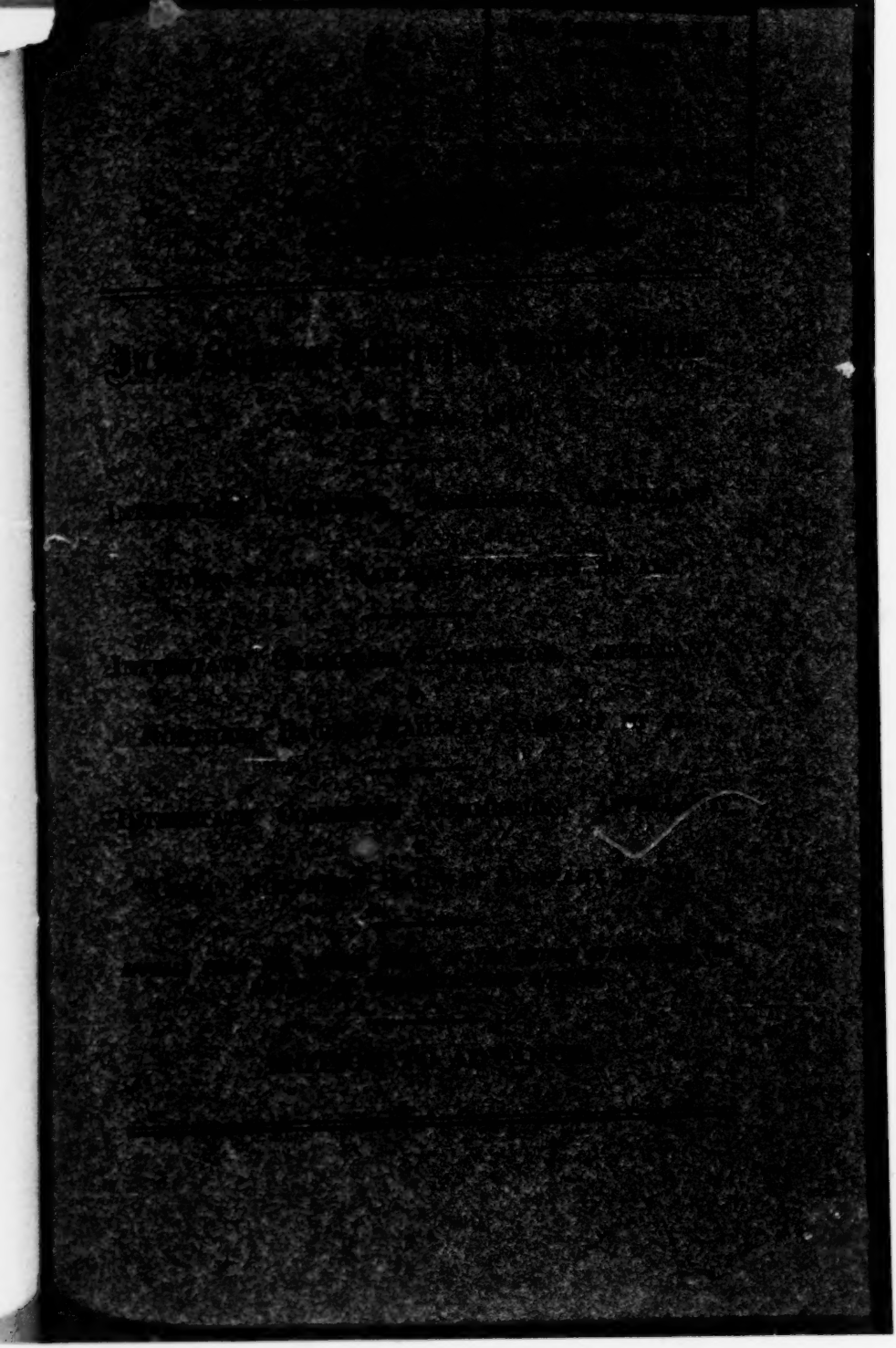
In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 28th day of October, A. D. 1910.

[SEAL.]

HENRY D. LANG, *Clerk.*
By LOUISE B. TROTT, *Deputy.*

(Indorsement on cover:) File No. 22,425. Minnesota. C. C. U. S. Term No. 453. The Interstate Commerce Commission, appellant, *vs.* Great Northern Railroad Company et al. Filed November 30th, 1910. File No. 22,425.

○



In the Supreme Court of the United States.

OCTOBER TERM, 1910.

INTERSTATE COMMERCE COMMISSION, appellant, *v.* UNION PACIFIC RAILROAD COMPANY ET AL.	No. 802.
INTERSTATE COMMERCE COMMISSION, appellant, *v.* NORTHERN PACIFIC RAILWAY COMPANY et al.	No. 803.
INTERSTATE COMMERCE COMMISSION, appellant, *v.* GREAT NORTHERN RAILWAY COMPANY et al.	No. 804.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION.

MOTION TO ADVANCE.

On behalf of the Interstate Commerce Commission, appellant, the Solicitor General respectfully moves the court to advance the above-entitled causes for hearing during the October term, 1911, for the following reasons:

1. These are appeals by the Interstate Commerce Commission from final decrees of the Circuit Court

of the United States for the District of Minnesota, third division, in three suits instituted in said court by the carriers above named and certain other carriers under the provisions of section 16 of the act to regulate commerce as amended, enjoining enforcement of orders of said commission requiring said carriers to cease and desist from maintaining and collecting their present rates for the transportation of lumber in carloads from points in the Northwest to various markets of consumption east thereof, and to establish and put in force and apply to such transportation, as maxima, in lieu of said rates, certain other rates prescribed in said orders.

2. The act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, in section 16, makes the provisions of "An act to expedite the hearing and determination of suits in equity," etc., approved February 11, 1903, applicable to all such suits, and said section provides that cases of this character shall have in this court "priority in hearing and determination over all other causes except criminal causes."

Notice of this motion has been served on opposing counsel.

FREDERICK W. LEHMANN,
Solicitor General.

APRIL, 1911.

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In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *v.* UNION PACIFIC RAILROAD COMPANY ET AL.	No. 451.
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL.	No. 452.
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *v.* GREAT NORTHERN RAILWAY COMPANY ET AL.	No. 453.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION, APPELLANT.

STATEMENT.

These cases come here on appeal from decrees of the United States Circuit Court for the District of

Minnesota enjoining, in part, orders of the Interstate Commerce Commission prescribing rates upon lumber and lumber products for the transportation thereof from the Pacific coast and points east thereof in the intermountain region to points in States east thereof, including St. Paul, Omaha, and Chicago. The orders of the commission were issued on June 1 and 2, 1908, as a result of four separate complaints. The carriers, appellees herein, complied with the orders of the commission, and the rates therein prescribed have been continuously in effect. Bills of complaint were filed a few days prior to the effective date of the orders, but no preliminary injunction was prayed for.

A special master was appointed and after a hearing he recommended decrees enjoining, in part, the rates prescribed by the commission, and this report of the master was approved by the Circuit Court for the Eighth Circuit sitting en banc. It is to reverse these decrees that these appeals have been taken.

STATEMENT OF FACTS.

For many years prior to November 1, 1907, the Northern Pacific Railway Company, the Great Northern Railway Company, and the Union Pacific Railroad Company, with their connections, had maintained rates upon lumber and other forest products from the Pacific coast and intermountain regions to points east thereof. There are three well-defined lumber producing regions, the rates

from which are involved in this case: First, the Pacific coast region, extending from the summit of the Cascade Mountains to the coast; second, the Spokane region, extending from the summit of the Rocky Mountains westward to the summit of the Cascades; third, the Montana-Oregon territory covering the eastern slope of the Rocky Mountains. The basic rates are those from the Pacific coast region, the other two regions taking differential rates thereunder. For the purpose of this case it will be sufficient to discuss the Pacific coast rates only. As fir is the principal lumber transported, we shall treat only of the fir rate.

As a fair illustration of the rates established many years prior to November 1, 1907, the following rates are given, in cents, per 100 pounds:

Pacific coast to St. Paul, 40 cents; Pacific coast to Omaha, 50 cents; Pacific coast to Chicago, 50 cents.

These rates remained in effect until November 1, 1907, when they were increased by the carriers as follows:

To St. Paul, 50 cents; to Omaha, 55 cents; to Chicago, 60 cents.

Prior to the effective date of these advanced rates, their collection was enjoined by the circuit courts in Oregon and Washington, which decrees were affirmed on appeal. (*Northern Pacific Railway Co.* v. *Pacific Coast, etc., Association*, 165 Fed., 1; *Union Pacific Co.* v. *Oregon, etc., Association*,

ib., 13.) The result was that the old rates were applied until the decision of the commission, so that the revenues of the carriers between November 1, 1907, and October 15, 1908, were not affected by these advanced rates.

On complaints by various lumber shippers and lumber organizations, and after a thorough investigation in four cases, the Interstate Commerce Commission in three separate reports and opinions held that the advanced rates complained of were unjust and unreasonable, and prescribed maximum rates for the future. The commission restored the old rates to all points on and west of a line drawn from Pembina, North Dakota, to Port Arthur, Texas, this line being practically the western border of Minnesota, Iowa, Missouri, Arkansas, and Louisiana, and an advance was allowed to all points east of this line of 5 cents per 100 pounds.

The rates prescribed by the commission to the illustrative points were:

To St. Paul, 45 cents; to Omaha, 50 cents; to Chicago, 55 cents.

These orders were to become effective October 15, 1908.

The record in each of the three appeals is practically the same, but there is a slight difference in the territory covered. Appeal 451 involves an order of the commission in its docket 1327; appeal 452 involves an order prescribed in dockets 1329 and 1335. These two cases involve rates from the Pacific coast. Appeal 453 involves rates prescribed by the commission in its docket 1348, and

involves rates from the Spokane territory to the east. Unless otherwise stated, the record herein referred to is that in appeal No. 451.

The commission was not unanimous in the reports and orders issued, Chairman Knapp and Commissioner Harlan dissenting in each of the three opinions.

The carriers in their bills of complaint attacked the orders of the commission on the following grounds, among others:

1. That the interstate commerce acts were unconstitutional.

2. That the carriers' rates were just and reasonable, and those fixed in their stead by the commission were unreasonably low.

It was alleged that the loss in revenue due to the commission's orders would exceed $700,000 per year.

The commission demurred to that part of the bill attacking the validity of the statutes (33) and answered the remainder (35). The answer denied the material allegations of the bill, and specifically that the carrier's rates were reasonable and that those fixed by the commission were unjust and unreasonable; on the contrary it averred that the evidence introduced before the commission showed that the advanced rates were unjust and unreasonable, and that the commission, upon a consideration of all the evidence, so decided, and fixed just and reasonable rates in their stead.

The several reports of the commission are attached as exhibits to the answer (44), and will also be found in 14 Inter. Com. Com. Rep. 1 et seq.

Issue being joined on the answers (67), the cases were on February 15, 1909, referred to a special master to report the evidence to the court, to find the facts, and to report advisory conclusions of law and recommend a form of decree (68).

The evidence before the commission was stipulated into the record before the master.

In addition, much testimony was taken by the carriers dealing with the cost of reproducing the Great Northern and Northern Pacific systems; no such testimony was offered as to the Union Pacific system. As to this testimony, it is sufficient here to say that the total cost of reproducing the Northern Pacific Railway was fixed at $682,193,601.68 (Rec., vol. 1, p. 117), which was substantially $185,000,000 more than the cost of reproducing the road as given by the same witnesses in the Spokane case before the commission a year earlier. The cost of reproducing the Great Northern Railway was fixed at $549,253,317, which was just $100,000,000 more than the cost fixed by the same witnesses in the Spokane case.

Upon the conclusion of the testimony the master filed a lengthy and elaborate report in which he found as a fact that the carriers were, and had been, prosperous, had earned fairly satisfactory net incomes, that the rates established by the commission were not confiscatory, and that the rates to points west of the Pembina-Port Arthur line were in no way subject to criticism.

He thereupon held as a matter of law that while a rate might be unassailable on constitutional grounds and absolutely free from confiscatory features, yet it might "in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate commerce act," (Rec. 103) in which event the courts would have jurisdiction to enjoin the order fixing such rates.

He then held that if the rate of 50 cents to Omaha as fixed by the commission was reasonable, the rates of 45 cents to St. Paul, and of 55 cents to Chicago, were so grossly unjust and unreasonable and so inherently vicious as to be an arbitrary and palpable disregard and perversion, not only of the spirit and intent of the law, but of its very terms forbidding discrimination against localities.

This proposition is one which had not occurred to the carriers during the entire history of the rates in question, for this differential established by the commission was only half that which the carriers themselves had maintained for fourteen years. Naturally, the carriers nowhere in their pleadings averred that this differential was discriminatory, nor did they give any evidence addressed to establishing that fact. Nevertheless, the master, solely upon this ground, found that the commission's rates to all points east of the Pembina-Port Arthur line were so discriminatory as to be beyond the very power of the commission to make, and he accord-

ingly recommended that that portion of the commission's orders be enjoined.

Exceptions to this report filed by the commission were overruled by the court below, which, in a very brief memorandum, adopted the master's view that this differential was so palpably and grossly unjust and unreasonable as to be beyond the substance of the power of the commission, and signed decrees in accordance with the master's recommendation.

ASSIGNMENT OF ERRORS.

The court below erred:

1. In holding that the orders of the commission were erroneous, unreasonable, and beyond the power of the commission to make.

2. In holding that the said orders were beyond the commission's power for the reason that the commission fixed a lower rate to St. Paul than to Omaha.

ARGUMENT.

While a number of questions were raised in the court below, the cases were decided upon a single proposition.

The constitutionality of the interstate commerce acts was not argued before the master and was not touched upon by the Circuit Court. It has been so fully sustained by this court that citation of the decisions even is not necessary.

Nor is a consideration of the vast quantity of evidence offered by the carriers as to the reproduc-

tive value of the Northern Pacific and Great Northern systems helpful. Avowedly it was not offered for the purpose of showing confiscation, or that the rates were unreasonable. (Rec., vol. 1, pp. 15, 16.) Nor, according to the testimony of the railroad officials themselves, was it ever considered by them in fixing rates. (President Elliott, vol. 2, p. 641.)

And in the opinion of the master its bearing upon the questions before him was so remote as to render it useless for him to attempt to weigh the testimony and determine the present actual value of the systems. (Vol. A, p. 93.)

Nor is there anything in the contention that the commission exceeded its jurisdiction because the carriers' rates were reasonable and those fixed by the commission in their stead were unreasonably low.

Under section 15 of the Hepburn Act, whenever the commission shall be of the opinion that the carriers' rates are unreasonable, it is their duty to fix reasonable rates. Whether those rates so fixed by the commission are, as between the carrier and shipper, fair and reasonable—that is whether the court upon the same testimony would have fixed the same rates—is not the question. (*Reagan* v. *Farmers' L. & T. Co.*, 154 U. S., 362.)

The rates must stand unless the court can say that they are confiscatory or that it was impossible for a fair-minded board to have established them.

(*San Diego Land & Town Co.* v. *Jasper*, 189 U. S., 439.)

These cases were decided by the master and the Circuit Court upon a single proposition—one which was not presented by the pleadings, it is true, but upon which we are entirely content to rest the case. Without further consideration, therefore, of the other questions presented below, we shall address ourselves to showing that—

THE ACTION OF THE COMMISSION IN FIXING A LESS RATE TO ST. PAUL THAN TO OMAHA WAS NEITHER ARBITRARY, UNREASONABLE, NOR IN VIOLATION OF THE STATUTE.

The action of the master which the court confirmed in this case is based squarely upon his finding that the rate to Omaha is the measure of the reasonable rate which should exist to St. Paul. That there may be no mistake about the position which the master took in this case, we quote from his report. (Rec., 103.)

> A rate may be unassailable on constitutional grounds, may be absolutely free from confiscatory features, and yet in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate-commerce act.
>
> A law passed in the interests of and to promote justness and reasonableness may not be used to perpetrate injustice and unreasonableness any more than the statute of frauds

can be used as an instrument to perpetrate fraud.

For this reason there does inhere in the Federal courts of equity power to review rates made by the commission above and beyond constitutional questions and questions as to the technical limits of delegated power, and to inquire whether or not the delegated power has been exercised in a just and reasonable manner, and wthin the true spirit and intent of the law, and to relieve from such orders as, though not technically confiscatory or discriminatory and not technically beyond the terms of the statute, are nevertheless so inherently inconsistent, unjust, unreasonable, and violative of common right as to be on their face unjust and unreasonable orders in the common sense of the terms. * * *

In restoring the superseded rates to the Pembina-Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point.

If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates.

The difficulties and expenses of transportation over the Union Pacific line and the northern lines are fairly equal. The route over the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates.

The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable.

If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities.

It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns to result in confiscation. This is probably true. There

> is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised. (Rec., 104, 105.)

In overruling defendant's exceptions to the master's report the court said:

> All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty-cent rate on lumber to St. Paul and other points east of the Pembina line was arbitrary, so palpably unjust and unreasonable, and so discriminatory that it was beyond the power of the commission, are overruled on the ground that this action of the commission was beyond its power, or so palpably and gravely unjust and unreasonable as to be beyond the substance, if not beyond the form, of its power. (Rec., 148.)

1. *In this decision the court and master invaded the very province of the commission.*

Whether a particular rate is reasonable or a particular discrimination is unjust is a question of fact. (*I. C. C.* v. *Alabama Midland Railway Co.*, 168 U. S.; *Import Rate Case*, 162 U. S., 197.)

Matters of fact are within the exclusive competency of the commission, and its decision thereon is final. (*Illinois Central Railroad* v. *I. C. C.*, 215 U. S., 452; *B. & O. Railroad Co.* v. *Pitcairn Railway*, Ib. 481; *Southern Pacific Co.* v. *I. C. C.*, 219 U. S., 433; *I. C. C.* v. *Del., L. & W. R. R. Co.*, 220 U. S., 235.)

In determining such questions, the commission should consider any fact proper to be considered by the carrier in fixing the rate. Said this court in *Texas & P. R. Co.* v. *I. C. C.* (162 U. S., 197, 219):

> The very terms of the statute that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers, and consumers, should be considered by a tribual appointed to carry into effect and enforce the provisions of the act. * * * To answer such questions in any case coming before the commission requires an investiga-

> tion into the facts; and we think that Congress must have intended that whatever would be regarded by common carriers, apart from the operation of the statute, as matters which warranted differences in charges, ought to be considered in forming a judgment whether such differences were or were not "unjust." Some charges might be unjust to shippers, others might be unjust to the carriers. The rights and interests of both must, under the terms of the act, be regarded by the commission.

The presumption is that the action of the commission was correct (*Chicago, Milwaukee, etc., Ry. Co.* v. *Tompkins,* 176 U. S., 167), and the court will not interefere unless it is impossible to say that a fair-minded commission could not have reached that conclusion. (*San Diego Land & Town Co.* v. *Jasper,* 189 U. S., 439.)

The commission had jurisdiction in these cases; concededly all the formalities of the statute were observed. This court well knows that the making of a rate involves the exercise of judgment or discretion. Mr. Munroe, the experienced freight traffic manager of the Union Pacific, testified as to this as follows (Rec., 333):

> Q. Now, the making of a freight rate is largely a matter of judgment, isn't it?
>
> A. It is.
>
> Q. A matter of opinion?
>
> A. Yes.

> Q. There is no method by which you can determine by any mathematical system, any accurate system, what a rate should be to be just to the public and to the carrier and to all concerned?
>
> A. There is no fixed rule.

In its determination the commission exercised its judgment and discretion upon all the facts in the record, both oral testimony and exhibits. It likewise had before it, by virtue of the provisions of the statute, the annual reports of the various carriers showing their revenues, cost of operation, and kindred questions, making in short a complete exposition of the statistical and financial data in minute detail of the carriers. In addition it had in its files, and examined in this case, the lumber rates of various carriers in the United States for the purposes of comparison. (Rec., 780.) Not only all this information, but the result of its years of experience in cases of this sort was always present in passing upon the questions involved.

It is clear that the master, in reaching a conclusion different from that of the commission and finding that a reasonable rate to St. Paul should be at least 50 cents, invaded the powers of the commission.

This action of the master was a plain departure from the principle announced by this court in the Reagan case (154 U. S., 362, 397), as follows:

> This body of rates, as a whole, is challenged by the plaintiff as unreasonable, un-

> just, and working a destruction of its rights of property. * * * The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable and such as to work a practical destruction to rights of property, and, if found so to be, to restrain its operation.

2. *Even if it were open to the court to examine the rates independently, it can not be said that the commission was arbitrary in fixing a lower rate to St. Paul than to Omaha.*

A. The differential of 5 cents between the rate to St. Paul and to Omaha was established by the carriers of their own volition in the tariffs of November 1, 1907.

B. By the master's own standard the rate of 45 cents to St. Paul is reasonable.

C. The circumstances and conditions of transportation to St. Paul and Omaha are not substantially similar.

A. The differential prescribed by the commission in its order was established by the carriers themselves.

In 1894 the rate established to Omaha on fir lumber was 60 cents. At the same time the rate to St. Paul was 40 cents. This differential of 20 cents remained until 1899, when the rate to Omaha was reduced to 50 cents, but this rate was again increased to 60 cents in 1900, and was again reduced to 50 cents in 1901. From that date until November 1, 1907, the 10-cent differential was applied. It should not be forgotten that during all this time the Northern Pacific and the Great Northern, in connection with the Chicago, Burlington and Quincy Ry. (the latter line being owned jointly by the former two railways) maintained the rate to Omaha 10 cents in excess of the St. Paul rate. If there was any discrimination as between St. Paul and Omaha, that discrimination was maintained by the Northern lines.

While the tariff of November 1, 1907, fixed the differential at 5 cents, it must not be forgotten that the injunction of the Circuit Courts of Washington and Oregon prevented this differential from becoming effective until the order by the commission in this case, which became effective October 15, 1908. While the order of the commission fixed this differential at 5 cents, it is 5 cents less than what existed within 15 years prior to the making of the order, yet the master finds that because the commission did not remove entirely the differential

between St. Paul and Omaha, the commission acted so arbitrarily, and so in defiance of what was just and reasonable, as to transcend the limits of its power under the act to regulate commerce.

Will this court affirm the proposition that the adoption of a differential, which is one-half of that maintained by the carriers, is so palpably unreasonable and arbitrary as to be beyond the power of the commission under the act to regulate commerce?

B. By the master's own standard the rate of 45 cents to St. Paul is reasonable.

The master sustained as reasonable all the rates prescribed by the commission west of the Pembina-Port Arthur line; in other words, the rates on and west of the western boundary of Minnesota of 40 cents were, by the master, said to be just and reasonable. Under the commission's order the 45-cent rate was to be reached a short distance east of the western State line of Minnesota. The carriers graded up the rate from 40 cents at Grand Forks, Fargo, Moorhead, Breckenridge, and Wahpeton until by successive rates of 41, 42, 43, and 44 cents, the maximum of 45 cents was reached on the Great Northern at McHugh, 50 miles east of the Pembina-Port Arthur line, and on the Northern Pacific at Fosston, 71 miles, and at Benson, 52 miles east of the Pembina-Port Arthur line.

If the rate to Grand Forks, Fargo, Moorhead, Breckenridge, and Wahpeton of 40 cents, is a reasonable rate, and the master has so found, then

it must inevitably follow that 5 cents additional for only a haul of from 50 miles to 71 miles, making a through rate of 45 cents, a just and reasonable rate. Undoubtedly, the circumstances and conditions on the Great Northern and Northern Pacific west of the Pembina-Port Arthur line, involving the mountain haul, were not more favorable to a given rate per ton per mile than that portion of these two lines lying east of the Pembina-Port Arthur line in the State of Minnesota. It is only 215 miles from Wahpeton via the Great Northern to St. Paul and only 250 miles from Fargo to St. Paul via the Northern Pacific.

Measured from any standpoint, by any method of reasoning, if the master's rate of 40 cents to Fargo and other points on the Pembina-Port Arthur line, is a just and reasonable rate, then 45 cents to the various Minnesota points lying between McHugh, Fosston, and Benson on the west and St. Paul and Duluth on the east, is certainly a just and reasonable rate. It is but the extension of the same scale of rates east of the Pembina-Port Arthur line which the master and the commission have fixed west of that line.

C. The circumstances and conditions of transportation to St. Paul and Omaha are not substantially the same.

This court has held that he who seeks to overthrow an order of the commission assumes the burden of showing every material element necessary to establish the unlawfulness of the commission's

order. Applying that principle to this case, it would appear that the carriers must show the similarity of conditions and circumstances surrounding the transportation of fir lumber to St. Paul, as compared with the transportation to Omaha.

The master finds that the conditions and circumstances surrounding the transportation between these two points are substantially similar. This court will examine the record in vain to find any allegation in the pleadings or facts in the evidence upon which such a finding can be made. On the contrary, the facts that do appear of record, meager as they are, show a total dissimilarity, with an attendant additional cost of transportation to Omaha over the Union Pacific line, as compared with the transportation over the Northern lines to St. Paul.

For example, the evidence shows that the highest altitude reached on the Northern Pacific is 2,335 feet, and on the Great Northern is 2,091 feet less than the highest altitude reached via the Union Pacific.

President Elliot of the Northern Pacific testified before the Interstate Commerce Commission in this case. (Rec., 1372.) He qualified as an engineer and filed, in the record, profiles of the Northern Pacific and Great Northern Railways, compared with the profiles of the Illinois Central from McComb, Mississippi, to Chicago, Illinois. He testified that the resistance which must be over-

come in order to move a ton on a level railroad is 6 pounds; that when the same ton is lifted up a one per cent grade, it requires an additional 20 pounds, or a total of 26 pounds. He further testified that the Northern Pacific from Tacoma to St. Paul, 1,909 miles, was compelled before reaching St. Paul with a loaded car to lift the same 15,493 feet; that figuring the resistance which those grades would offer for transportation, it was equivalent to 1,338 miles at one per cent grade.

On the Great Northern Railroad, a mileage of 1,821 miles, the total lift required to reach St. Paul was 12,459 feet; that this lift was equivalent to a one per cent grade on 1,363 miles. It does not appear in this record what is the profile of the Union Pacific and its connecting lines from Portland through to Omaha. Without this profile or equivalent evidence it is absolutely impossible to make any comparison similar to that which Mr. Elliot made with the Illinois Central. Comparisons in order to be absolutely correct must be based upon the same elementary facts. Such a comparison we can not make as between the Union Pacific and the two Northern lines. But assuming that for an equal elevation the total lift of the loaded car is the same via the Union Pacific as via the Northern Pacific, we can have some light thrown upon the relation of cost. If the Northern Pacific, with a highest elevation at any one point of 5,665 feet, must lift the loaded car 15,493 feet over a one per

cent grade of 1,338 miles to reach St. Paul, then over the Union Pacific it would be necessary to lift the car 2,335 feet higher, or a total of 17,821 feet, on the basis of 1,338 miles one per cent grade on the Northern Pacific. The increased lift on the Union Pacific would represent 1,539 miles of one per cent grade, an increase of 201 miles, considerably in excess of ten per cent of the one per cent mileage via the Northern Pacific.

A similar comparison between the Union Pacific and Great Northern Railways upon the same assumption gives the following result: Via the Union Pacific the loaded car must be lifted 2,091 feet higher, or a total of 14,550 feet. If in lifting the loaded car on the Great Northern 12,459 feet it is necessary to haul the loaded car over 1,353 miles of one per cent grade, then on the same basis via the Union Pacific for a total lift of 14,550 feet it will be found that the total haul on the one per cent grade is 1,592 miles, or considerably in excess of ten per cent over the Great Northern haul.

Taking another basis of comparison used by Mr. Elliot, we find a still greater difference between the Northern Lines and the Union Pacific in the power necessary to get the same loaded car to St. Paul over the Northern Lines and a similar car over the Union Pacific line to Omaha. We have already seen that in his evidence Mr. Elliot fixed the resistance to be overcome on a one per cent grade at twenty-six (26) pounds. Taking this resistance

and applying it to the 1,338 miles of one per cent grade, we obtain a total resistance of 34,668 pounds on the Northern Pacific as against the total resistance on the Union Pacific of 40,014 pounds.

A similar comparison between the Great Northern and Union Pacific shows a total resistance on the Great Northern of 35,438 pounds as against 41,392 on the Union Pacific.

By any comparison which can be made from the figures of Mr. Elliot, it appears that there is much more than a ten per cent difference between the service to be performed in reaching Omaha and in reaching St. Paul.

Another pertinent fact which should be borne in mind in this connection is this: When the lumber is carried over either the Great Northern or Northern Pacific from the Pacific coast to St. Paul, it is carried over a single line. When the lumber is carried to Omaha over the Union Pacific and its connections, it is carried over not less than three lines and in nearly all instances four lines. All rate-making commissions recognize generally that where traffic is hauled over two lines or more the rate may very properly be in excess of what would be proper for the same mileage when hauled by one carrier only. For example, the State of Texas on first-class traffic has established mileage rates, when two carriers transport the traffic, 8 cents higher per hundred pounds than would be charged by one carrier over the same total mileage.

There is no single-line competition to Omaha. There is to St. Paul.

Again, taking the basis of difference suggested by Mr. Woodworth in his reply to the question of Mr. Wimbish (Rec., 1472) as to why he made a rate of 40 cents to St. Paul as against 50 cents to Omaha, we find this condition: The Northern Pacific hauls in the same train a car of lumber from Tacoma to Billings destined for St. Paul and a car destined to Omaha. After these cars reach Billings the expensive haul has been performed.

It appears from Mr. Woodworth's testimony that the Northern Pacific, having hauled the car from Tacoma to Billings, 1,015 miles, and the Chicago, Burlington & Quincy from Billings to Omaha, 897 miles, out of a total haul of 1,912 miles, the revenue was divided between these two lines according to the mileage. This division gives the Northern Pacific 26.35 cents from Tacoma to Billings and the Burlington 23.45 cents for the haul Billings to Omaha. Mr. Woodworth preferred to haul the lumber to St. Paul for 40 cents, because he received for the additional haul of 892 miles from Billings to St. Paul 13.45 cents more than he would have received had the lumber gone to Omaha.

Mr. Munroe, freight traffic manager of the Union Pacific, testified on this very point (Rec., 308):

> We always felt that the differential of 5 cents obtaining at the lower points above St. Paul was too low. We recognize that the

> conditions might be, and doubtless were, different at St. Paul and Minneapolis than from what they were at Omaha. I speak of Omaha as the typical point.

So that we have a complete unanimity of opinion between Mr. Woodworth, freight traffic manager of the Northern Pacific, and Mr. Munroe, freight traffic manager of the Union Pacific, in their opinion that there should be a differential as between St. Paul and Omaha.

All the witnesses, both before the commission and before the master, deprecated the making of rates upon any mileage basis, but it is not without some value in this case to have some representative mileages. The rate of 50 cents to Omaha, as applied by the commission, extends from Ashland on the Southern Pacific, through Portland, over the Oregon-Washington Ry. and Navigation Co., through Huntington, Oregon, over the Oregon Short Line to Granger, Wyoming, thence over the Union Pacific Granger to Omaha, a total short-line distance of 2,140 miles. Sumas, Washington, is perhaps the most representative long-distance point from which fir lumber is hauled on the 50-cent rate to Omaha by the northern lines, and this total distance over the Great Northern and Burlington is 2,098 miles, while over the Northern Pacific and the Burlington the distance is 1,942 miles. From Tacoma to St. Paul over the Great Northern and Northern Pacific, the distance is

1,855 miles and 1,907 miles, respectively. From all coast points to Duluth over the Great Northern, the distance is 70 miles less than to St. Paul; over the Northern Pacific 6 miles farther than to St. Paul. The short-line distance St. Paul to Seattle over the Great Northern is 1,814 miles, and over the Northern Pacific 1,911 miles. From these figures it seems patent that the distance of the maximum haul via the Union Pacific and its connections, and via the Northern lines and the Burlington to Omaha, is much greater than via the Northern lines to St. Paul or Duluth.

IN CONCLUSION.

In the bills of complaint the carriers charged a loss of $700,000 per year as the result of the commission's order. Although more than a year elapsed after the effective date of the order of the commission, not a particle of testimony was presented to show the earnings under the commission's order, or what effect that order had upon the revenues of the carriers. We do know that the commission gave the carriers an advance of five cents to St. Paul territory; that that was a free addition to the net revenues of these carriers.

Further, the carriers alleged in the bills of complaint that "it was possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said orders," and yet

not a particle of testimony was offered from which it could be determined whether or not there was loss or profit under these rates.

Having stated their ability to make this showing, and having wholly failed to make such showing, it must be concluded that if the evidence which they possessed had tended to support their allegation, such evidence would have been presented.

The order of the commission expired one year ago. The rates prescribed by the commission remained in effect throughout the two-year period, and have to this good day remained the basis upon which the revenue of these Northern lines have been fixed. If the injustice which the master found was so palpable, if the discrimination against the Northern lines was so apparent it would seem that these carriers would long since have secured themselves by readjusting the St. Paul rate. All the contentions made in the court below as to these facts of the case must vanish when compared with their actions in maintaining the commission's rates for a year after the order expired.

The Great Northern and Northern Pacific and the Union Pacific lines for many years have earned munificent returns upon the capital invested in these properties.

In no manner did the commission, by its orders complained of in this case, violate any principle of fair dealing or transcend in any wise the provisions of the act to regulate commerce.

The decrees of the court below enjoining the orders of the commission should be reversed.

Respectfully submitted.

LUTHER M. WALTER,
Special Assistant to the Attorney General.
JESSE C. ADKINS,
Attorney.

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In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE INTERSTATE COMMERCE COMMISSION, appellant, *v.* UNION PACIFIC RAILROAD COMPANY ET AL.	No. 451.
THE INTERSTATE COMMERCE COMMISSION, appellant, *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL.	No. 452.
THE INTERSTATE COMMERCE COMMISSION, appellant, *v.* GREAT NORTHERN RAILWAY COMPANY ET AL.	No. 453.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

REPLY BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

We have just been handed a copy of the brief for appellees in these cases. We had not thought that this court would be concerned with any proposition save that on which the master and court below held

the commission's order unlawful. But there are certain propositions advanced in the brief which we consider it necessary to reply to. Their brief first sets forth the allegations of the bill and the answer. Appellees contend that the commission erred as a matter of law in holding that the continuance of the low rates from 1893 to November 1, 1907, raised the presumption that the higher rates, effective on and after November 1, 1907, were unjust and unreasonable. Further, appellees contend that these cases should be affirmed by this court because the commission decided the cases upon the doctrine of estoppel, which this court held vitiated the order made the basis of the opinion in this court in the case of *Southern Pacific Co.* v. *Interstate Commerce Commission* (219 U. S., 433).

While appellees admit (p. 25 of their brief) that the complaints before the commission "charged in definite language that the advanced rates were unreasonable and excessive," and also admit that certain language in the opinions of the commission, if segregated from the whole and read without reference to the substance of the complaints and the character of the evidence offered in support thereof, would tend to show that the commission concerned itself only with the reasonableness of the rates, in and of themselves, with regard to the service rendered; yet it is contended that the commission decided these cases simply and solely upon the equities due to the shippers without reference to the reasonableness of the rates.

That there may be no mistake we quote from the brief (p. 155), after referring to the decision of this court in the Willamette Valley case:

> We assert that the record here establishes with equal clearness that the exertion of the power in these cases by the commission gives rise to the unavoidable inference that the commission established these rates in precisely the same manner in which it established the rate to San Francisco.

Appellees set forth in their brief various paragraphs from the complaints before the commission but do not set forth the entire complaints. It therefore becomes necessary, for the information of this court, to print additional parts of the complaints, as well as pertinent parts of the answers of the defendants before the commission.

We shall not comment upon these pleadings further than to say that they show beyond all question that the case before the commission squarely presented the issue of the reasonableness of the rates complained of under section 1 of the act to regulate commerce.

We quote from the complaint in docket No. 1327, *Oregon & Washington Lumber Manufacturers' Association* v. *Union Pacific et al:*

XIX.

> That notwithstanding the movement of forest products from points in the State of Oregon and other Northwest States to points

in other States and Territories within the United States, as set forth in said new tariff, varies in volume over the different defendants' roads, that the traffic conditions also are different and the physical conditions on the several roads vary, yet in pursuance of the combination and conspiracy hereinabove alleged each and all of the above-mentioned roads, by said concert of action as hereinbefore set out, have advanced the rates in the same amount from the originating points to common points and places in other States and Territories within the United States, as set out in said tariffs.

XXII.

That said tariffs herein specified and in effect just prior to the first day of November, 1907, always have been and still are, more than fair, just, reasonable, and remunerative for the defendants and each of them, and that the traffic and earnings of each and all of said roads are, and have been for many years past, constantly increasing; that the defendants and each of them have from time to time materially and substantially increased their net revenue and profits and their net surplus under their tariffs formerly in effect, and at all times have been and still are earning large profits by means of said tariffs, so that no increase over the rates on lumber and forest products heretofore in effect is reasonable or should be permitted.

That said proposed advance in rates herein

specified and complained of is not made necessary by reason of any changed conditions affecting the transportation of forest products, or the service required in connection therewith, or by the financial condition of the defendants.

That said proposed rates discriminate against complainants and subject complainants and the various localities in which they conduct their business to undue and unreasonable prejudices and disadvantages and give undue and unreasonable preferences and advantages to persons other than complainants and those similarly situated and to localities other than those wherein complainants transact their business, all in violation of the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplemental thereto.

XXIII.

That the capital stock of each of the defendant companies grossly exceeds as to the public and as a basis for rates the actual value of the construction and equipment of said defendant railroads, and the value of all their property devoted to the public use, and that as to the public and as a basis for rates the bonded indebtedness of each of said defendants grossly exceeds the fair value of the property of defendants, and that it is unjust and unreasonable to impose this increase in rates as an additional burden to pay divi-

dends on said excessive stock, and principal and interest on said excessive bonds, and that upon the basis of value upon which defendants are entitled to earn a reasonable compensation the existing rates on forest products from the State of Oregon and the Pacific Northwest States are unreasonable and unjust, and that on a proper basis and on the basis on which the defendants are entitled to charge the rates formerly in effect were unjust, unlawful, and unreasonable. That by combining and confederating together with intent to create a monopoly and to oppress your petitioners, by express agreement or by implied understanding one with the other, the defendants have long maintained and do still maintain a schedule of charges calculated to return an unreasonably high profit upon the capital actually paid in and invested in the properties of said defendant companies, all of which matters and things your petitioners believe, and therefore aver, will fully appear if the said defendants be ordered to produce their books of account, papers, contracts, agreements, and other documents relating to said defendants' business for examination. And in support of the allegations set forth herein, the complainants hereby refer to, and make a part hereof, the classifications, schedules, and tariffs adopted and used by the defendants and their connections engaged in the transportation of forest products to and from the State of Oregon and the Pacific Northwest to other points mentioned in the foregoing

complaint, and the tariffs in effect immediately prior to November 1, 1907, together with the reports relating to the receipts and disbursements, capital account, the amount of operating expenses, fixed charges, and other expenses of defendants and dividends and other items paid, all of which said classifications, schedules, tariffs, and reports are on file in the office of this commission.

XXIV.

That complainants are unable at this time to state the exact amount in tonnage of forest products carried by all the various defendant roads, but allege the tonnage so carried was very heavy, has steadily increased for many years past, and that the carriage of said forest products by said defendants, and each of them, is highly profitable.

That lumber and forest products are a very low grade of traffic; this traffic is constant during the entire year; no special equipment is constructed or furnished for its carriage; it is loaded by the shipper and unloaded by the consignee, and where flat or open cars are furnished shippers are required, at considerable expense, to equip them so as to protect the lumber and train; it is not perishable, does not require rapidity of movement; there is small risk; in case of accident the damage is insignificant; said products are articles of general utility, and the rates thereon should therefore be relatively low.

To these various paragraphs of the complaint answers were filed, and for the Northern Pacific and Great Northern Railroads it was answered:

XXIV.

Defendant denies that under the superseded rates lumber traffic was very profitable, and alleges that said rates were unreasonably low and that said traffic did not bear its fair proportion of the cost of operating defendant's railroad and the return to which defendant was entitled upon its investment in its railroad property. Defendant denies that any special conditions exist with respect to transportation of lumber which entitle the shipper from points in Oregon or the Pacific Northwest to rates which are unreasonably low in view of the circumstances of the transportation.

XXVIII.

Further answering, this defendant alleges that the rates superseded by the tariffs complained of were established under conditions of transportation from the Pacific Northwest to eastern and southeastern points at a time when the conditions affecting the manufacturing and marketing of lumber and the transportation of the same were wholly different from those now existing, in that when said rates were so established the lumber industry in the Pacific Northwest was in its infancy and conditions were such that it was impossible for the manufacturers in that ter-

ritory to compete with the producers of lumber in Minnesota and Wisconsin and other points; that at the time said rates were so established the traffic of the transcontinental lines of railway was comparatively small, and the majority of the tonnage was west bound; that said rates were fixed at an abnormally low point and much below the rates previously enforced and for the purpose of enabling the carriers to secure traffic for east-bound shipment to balance in part the great excess of west-bound tonnage and for the purpose of developing the lumber industry and resources of the Pacific Northwest and enabling the lumber interests in that section of the country to increase their business and find a market in the Middle and Eastern States of the country; that by reason of that abnormally low rate the lumber manufacturers who are represented by the petitioners were enabled during the succeeding years to enormously increase their business and greatly extend the range of their markets, whereby, as a result of the abnormally low rate put in, as aforesaid, the Pacific coast lumber industry had grown to enormous proportions and has become of tremendous profit to those engaged in it. In the meantime the carriers engaged in the traffic have continued to transport the forest products in question at rates far less than compensatory; and this defendant alleges that in view of all the facts and circumstances stated it is but just and proper that the preceding low and uncompensatory rates should now be ad-

justed upon a reasonable and compensatory basis and that the advance in rates complained of is no more than proper under the circumstances; that the proposed advance in rates has not been made upon any idea or purpose on part of this defendant or other carriers interested in said rates of injuring or in any other way impairing the ability of lumber manufacturers involved to properly and profitably conduct their business, or with any idea or purpose of placing upon their traffic all or even approximately all that the traffic can bear, or for the purpose of in any way sharing in the profits of the lumber manufacturers in question, but solely for the purpose of avoiding an undue burden upon other forms of traffic and of reaching a proper relative adjustment of the rates on lumber and forest products to rates on other traffic, and bringing it about that the traffic in lumber and forest products shall bear a reasonable rate and return to this defendant and those other carriers engaged therein a just and reasonable return therefor.

The Union Pacific made answer:

XIX.

These defendants admit that the movement of forest products from points in the State of Oregon and other Northwest States to points in other States and Territories in the United States, as set forth in the new tariff, does vary in volume over the various roads and the traffic conditions and physical

conditions do vary on the various roads, but they deny that in pursuance of any combination or conspiracy, which they say does not exist, have the rates been made the same, but say that wherein said rates are coincident they are forced to be so by reason of the well-known fact that competition between roads necessarily forces rates between the same points over different lines of railroad serving them to the same level.

XXII.

These defendants deny that the tariffs in effect prior to November, 1907, were fair or just or remunerative, but declare that they were neither. They say that for a portion of the time defendants' net revenue increased, that at other times it has not increased, and that their surplus has not been increased from net revenue derived from such tariff nor are they earning large profits under the same; that the advances in rates is made necessary on account of changed conditions in increase in cost of operation and because the service is performed for inadequate compensation. These defendants deny that the rates discriminate against complainants or subject complainants or localities in which they conduct their business to unreasonable prejudice or that they are in violation of any act of Congress. These defendants say that so far as there has been any increase in revenue, in surplus, or in earnings the same has come from the carriage of other freights and from investments otherwise rightly made.

XXIII.

These defendants deny that the capital stock of the defendants grossly exceeds as to the public and as a basis for rates the actual value of the construction or equipment of said railroads and deny that the bonded indebtedness added to the capital stock makes such excess, but say on the contrary that the correct amount of bonds and capital stock is far less than the true value of the road or the amount it would take to reconstruct the same. They say that in accordance with such true value if it were used as a basis for determining rates it would be entitled to charge rates in excess of what they are. They further say that irrespective of any such question the value of the service performed for complainants is more than the rates charged. These defendants deny any combination or confederation to create a monopoly or to oppress complainants or others similarly situated by express agreement or implied understanding and further deny that they have at any time maintained a schedule of rates producing high profits.

XXIV.

These defendants deny that the carriage of forest products has been highly profitable to defendants. They deny that forest products are a very low grade of traffic, say they are not the highest grade of traffic nor are they very low, but rather intermediate in char-

acter. It is not true that the shipment of forest products is constant during the entire year. It is true that there is more or less shipment of forest products at all times of the year but the shipment varies, at times being much greater than at other times. It is true that the shipments are loaded and unloaded by shipper and consignee and that where loaded on flat or open cars where stakes are required that such stakes are ordinarily furnished by the shipper, but they say that an allowance is given in weight covering this and furthermore the furnishing of such stakes is no different from what is done and has been long established by custom in various other kinds of shipments where the shipper fastens the goods in place on flat cars; furthermore, this custom being as aforesaid long existent the rates have been made with regard to it and are maintained with regard to it in the new schedule.

In the so-called *Washington case* counsel sets forth from the complaint paragraphs V and VI, but omits VII and VIII; he then copies paragraph IX. The paragraphs omitted are, in view of the position which counsel now assumes, very material. We here set forth paragraphs VII and VIII (*Pacific Coast Lumber Association* v. *Northern Pacific Railroad Co.*):

VII.

Not only were the last existing rates as great as the traffic could bear, and greater than a large part of the product would bear,

but under those rates the defendant carriers have greatly prospered. Petitioners are advised by their counsel and submit that common carriers may not demand from the public more than reasonable compensation for the service rendered, and in no case may they exact more than the customers can afford to pay and permit a free movement of the traffic. Petitioners charge that the previous rates on lumber yielded the defendants, and each of them, full compensation for the service rendered in the transportation of lumber. Lumber and forest products constituted in the year 1906, 17.33 per cent of the entire tonnage of the defendant Great Northern Railway Co., and 38.82 per cent of the tonnage of the defendant Northern Pacific Railway Co. In the year 1900 the tonnage of forest products over the Great Northern Railway Co. was 1,079,155 tons, out of a total tonnage from all traffic of 5,162,757; and in the year 1906 the tonnage of forest products was 2,789,306, out of a total tonnage of 16,123,540 tons; the tonnage of forest products of the Northern Pacific Railway Co. in 1900 was 2,217,526 tons, out of a total tonnage of 7,121,655; and in 1906 the tonnage of forest products was 5,961,617, out of a total tonnage from all traffic of 15,356,312 tons. Petitioners charge that the tonnage over the Chicago, Burlington & Quincy Railroad and over the Harriman lines and the lines of the other defendants will show a similarly large proportion to the entire tonnage of all traffic.

The gross earnings of the Great Northern increased from $22,019,052.66 in 1900 to $46,494,226.57 in 1906; the net earnings from operation increased from $10,370,620.47 in 1900 to $23,361,143.46 in 1906; the surplus for the year 1900 was $2,217,763.74, while that for the year 1906 was $5,184,569.31; the surplus revenue or net surplus (which includes the accumulated surplus as well as that for the year) was, in 1900, $2,684,240.76, and in the year 1906, $23,593,165.81; the total tonnage increased from 5,162,757 tons in 1900 to 16,123,540 tons in 1906, while the operating ratio of expenses to earnings actually decreased from 52.90 per cent to 49.77 per cent; the net earnings per mile increased from $2,538.65 in 1900 to $4,507.26 in 1906; and in the year 1906 the Great Northern earned and paid a dividend of 7 per cent, or $9,148,521, on its stock, as against $6,408,777.72 paid in 1900. The gross earnings of the Northern Pacific Railway Co. increased from $30,001,036.67 in 1900 to $61,132,655.47 in 1906; the net earnings from operation increased from $15,626,689.41 in 1900 to $30,103,043.37 in 1906; the annual surplus increased from $1,083,818.76 in 1900 to $5,542,519.69 in 1906, while the accumulated surplus revenue increased from $2,504,804.85 in 1900 to $19,936,979.40 in 1906; the net earnings per mile increased from $3,314.82 in 1900 to $5,573.46 in 1906; the tonnage increased from 7,121,655 in 1900 to 15,356,312 tons in 1906; the operating ratio increased only from 47.90 per cent in 1900 to 50.75 per cent in 1906.

The dividends paid in 1906 amounted to $10,850,000, or 7 per cent, as against $5,400,000 paid in 1900.

The Chicago, Burlington & Quincy shows gross earnings of $73,413,385.88 in 1906, as compared with $47,535,420 in 1900, and net earnings of $22,758,224.45, as compared with $17,718,582; its surplus for the year 1906 was $3,907,572.30; its ratio of operating expenses increased from 62.73 per cent in 1900 to 69.41 per cent in 1906; in 1900 it paid a dividend of 5 per cent, while in 1907 it paid a regular dividend of 8 per cent and a special dividend of 6 per cent, or a total dividend of 14 per cent.

The Harriman lines increased their gross earnings from $46,639,629 in 1902 to $66,879,142 in 1906; net earnings from operations increased from $23,359,927 in 1902 to $32,055,066 in 1906; the annual surplus in 1906 was $8,032,249.66, and the accumulated surplus was $16,457,583; the gross earnings per mile increased from $8,166.76 in 1902 to $12,376.89 in 1906, and the net earnings per mile increased from $4,090.40 to $5,932.22; during the same period the tonnage increased from 8,590,193 tons to 13,048,346 tons, and the operating ratio increased from 50.92 to 52.07. In 1902 these lines paid in dividends 4 per cent on preferred and 5½ on common stock, and in 1906 the preferred stock received 4 per cent and the common stock 8 per cent.

In addition to operating expenses and dividends paid by the several defendants,

each of them paid fixed charges, including a large amount of interest on bonds and funded debts; and under the cover of operating expenses, petitioners charge that large amounts were expended for permanent betterments and improvements.

Petitioners further aver upon information and belief that the tonnage of forest products constitutes 17.33 per cent of the entire tonnage and pays 27.80 per cent of the entire gross earnings of the Great Northern Railway Co., estimated to yield $13,946,530 gross freight revenue, and constituted 38.82 per cent of the entire tonnage and 48.75 per cent of the gross earnings of the Northern Pacific Railway Co., paying a gross revenue estimated at $29,808,060. Petitioners charge that the gross revenue derived by the Northern Pacific Railway from its tonnage of forest products exceeds by several million dollars the entire operating expenses of the railway company attributable to its freight business, so that the revenue derived from all other freight traffic may be classified as net earnings from operation; and petitioners submit that a low-grade commodity which bears such a burden and contributes so substantially to gross and net earnings is highly profitable to the carrier.

VIII.

Petitioners submit that lumber and forest products are entitled to as low a rate as will permit the traffic to move freely and as will afford fair compensation to the carriers for

> the service rendered; that under the superseded rates the traffic was very profitable to the carrier; that the tonnage is large and would be larger if the carriers would furnish the cars required, which they have failed and refused to do; that the movement is constant and regular, not depending upon seasons; that rapidity of movement is not required; that no special equipment is required; that the movement between interstate points is almost wholly in carload lots, which are loaded and partially equipped by the shipper and unloaded by the consignee, without expense to the carriers; that the risk of loss or damage in transit is so slight as to be negligible; that lumber is an article of prime utility required to be transported long distances; that it is of large bulk and weight as compared to value; and that even under the last existing rates the cost of transportation to consuming markets in other States exceeded the value of the lumber at the mills.

In the answers, which were generally the same, material denials and allegations were made, and upon the point presented by counsel for the appellees we quote from the Northern Pacific Co.'s answer:

> VI.
>
> Defendant denies that a large part of the investment in the lumber industry was made on the faith that the freight rate on lumber would not be increased. Defendant is not informed as to whether freight rates on the

average of all traffic in the United States have decreased 20 per cent or at all, within the past 20 years, and is not informed as to the extent of the decrease in freight rates on transcontinental traffic during that period. Defendant admits that its earnings per ton per mile in the year 1906 were less than similar earnings in the year 1900, but alleges that such decrease was largely the result of causes other than the decrease in freight rates. Defendant admits that the last existing rates on lumber from points within to points without the State of Washington were voluntarily established by it in connection with other carriers, but denies that petitioners were entitled to presume that such rates would not be advanced. Defendant admits that the previous rates to St. Paul, Omaha, and Denver are correctly stated in paragraph six of the petition, except that it denies that rates on spruce and hemlock have been long maintained, but alleges that until recently such commodity took the same rates as the rates on cedar products. Defendant alleges that any difficulty which the lumber manufacturers of Washington experienced in competing with other manufacturers was due solely to the fact that such other manufacturers were more favorably situated with reference to the markets, and no manufacturer enjoyed as favorable a freight rate, in view of all the circumstances attending the transportation, as that enjoyed by the manufacturers of the Pacific Northwest. Defendant is not in-

formed as to the extent of waste committed by the manufacturers of Washington in the destruction of the lower grades of lumber to enable them to carry on an artificial competition with manufacturers more favorably situated with reference to the markets.

VII.

Defendant denies that the last existing rates were or are as great as the lumber traffic could bear, and denies that the present rates complained of were based upon the ability of the shippers of such traffic to pay the same; and defendant denies that any prosperity which the carriers enjoyed has been the result of the said rates, but such prosperity has been the result of the earnings from other traffic. Defendant admits that common carriers may not demand for service rendered more than reasonable compensation, but alleges that the previous rates constitute less than reasonable compensation for the service rendered and the rates complained of no more than such reasonable compensation. Defendant is not informed as to the percentage which the movement of lumber and forest products over the lines of the defendant Great Northern Railway Co. bore to the entire tonnage of said company in the years mentioned in the petition, or as to the amount of the total tonnage or the tonnage of forest products over said lines. Defendant admits that the percentage of the movement of lumber and forest products

over its line is stated with substantial correctness in the petition, and it alleges that the figures set forth in the petition comprise large quantities of lumber originating at other points than the Pacific Northwest. Defendant is not informed as to the earnings, gross or net, or surplus, or earnings per mile, or operating ratio of the Chicago, Burlington & Quincy Railroad Co., or of the the so-called Harriman lines, for the years mentioned in the petition, nor with respect to the dividends of said companies. This defendant admits that its gross earnings increased from the year 1900 to 1906 in substantially the amounts named in the petition, and that its net earnings during the same period and its earnings per mile increased in substantially the amounts stated in the petition; but this defendant begs leave to refer to its reports to this commission for the years in question, which show the exact amounts of such items. This defendant admits that in addition to operating expenses and dividends paid by it it paid fixed charges, including the interest on bonds and funded debts, but denies that under cover of operating expenses it charged large or any amounts for permanent betterments or improvements. Defendant admits that the tonnage of forest products transported by it constituted 38.82 per cent in the year 1906 of its total tonnage, but alleges that a large proportion thereof was lumber tonnage originating at points other than in the State of Washington, and denies that the revenue

received from such lumber tonnage constituted 48.75 per cent of defendant's gross earnings, or paid a revenue equal or approximating $29,808,060, and alleges that the revenue derived from that source was much less than the sum last mentioned. Defendant denies that the revenue derived from its tonnage of forest products exceeds the operating expenses of its railway.

VIII.

Defendant denies that under the superseded rates lumber traffic was very profitable and alleges that said rates were unreasonably low and that said traffic did not bear its fair proportion of the cost of operating defendant's railroad and of the return to which the defendant was entitled upon its investment in its railroad property. Defendant denies that any special conditions exist with respect to the transportation of lumber which entitle the shipper from points in Washington or Pacific Northwest to rates that are unreasonably low in view of the circumstances of the transportation.

Complainants further set forth excerpts from the southwest Washington complaint, docket No. 1335, but, likewise, wholly fail to show the allegations as to the unreasonableness of the rates.

It is sufficient here to state that the complaint is also verbatim with the allegations which we have copied herein (docket No. 1327).

We will not encumber this brief by again repeating what is in the first complaint.

The commission's opinion is set forth as exhibits to the answers of the commission in volume A, 451, at page 44; No. 452, page 43; and No. 453, page 45.

We need not in this brief set forth any copious extracts from the report of the commission. An examination of the commission's report and opinion in each of these cases shows indubitably that the commission considered and decided these cases on the justness or reasonableness of the rates in controversy.

As to the matter of the presumption arising by virtue of the long continuance of the rates, the commission said (Op. 1327, Rec., 55):

> The Supreme Court of the United States has said, in *Interstate Commerce Commission* v. *Chicago Great Western Railway Co.* (209 U. S., 108), that an increase of rates by a carrier raises no presumption of wrong. It seems, however, that when certain rates have been in force for a long period of time and business conditions have become well settled thereon and the carrier is earning a liberal income and paying liberal dividends while expending large sums in improvements and renewals, a material increase in these rates unaccompanied by a corresponding decrease in other rates places upon the carrier the obligation of justifying the increase.

The carriers acted upon this doctrine before the commission, and undertook to justify the advance of the rates in question. The utmost criticism which the carriers made of the commission's judgment on

this matter is perhaps in their remark (p. 53 of their brief) while discussing the empty-car movement:

> The shipment eastward of other forms of traffic has had little to do with the change in the empty-car movement; and it may be stated here that the remarks of the Commission in its opinions in the coast cases on that subject, are not borne out by the exhibits in evidence and the testimony of the witnesses who are familiar with the facts.

One of the things complained of in brief for appellees is that the commission took evidence of witnesses for the railways and considered it for what it might mean without limiting such consideration to the purpose for which the carriers intended it. For example, page 99 of that brief says:

> The commission discussed Hinckley Exhibit 3, which is a table necessarily by approximation, of the *comparative* cost per loaded freight car mile, arrived at by dividing total operating expenses and taxes by mileage of loaded freight cars on the different lines in question. This exhibit was not offered as a basis for determining actual cost because, obviously, it was open to many objections if so offered, but as stated, it was offered as a basis of *relative* cost, computed for each line upon the same basis and therefore offered a comparison of some value, and consequently a means of comparing the rates in question with the yellow pine rates approved by the Commission.

> The opinion of the Commission in the Oregon case, however, seems to have taken this exhibit, as well as others, as offered for the purpose of showing actual cost. It proceeds to deal with this and other exhibits with the same mistaken idea, producing results of no apparent value to the question of the reasonableness of these rates; indeed, the Commission did not deem the results so drawn as of any value and properly said: "These calculations show how easy it is to play with figures and make them prove almost any desired result."

When counsel say in their bills of complaint and in their brief and argument here that there was *no evidence* showing or tending to show that the rates of November 1, 1907, were unjust or unreasonable, all that is intended to be said is that, in the judgment or opinion of counsel for appellees, there is no such evidence. In other words, counsels' complaint against the commission is that, upon the evidence, it believed, or in its opinion it seemed, that the rates complained of were unjust or unreasonable. So it is not quite fair to say that there was no evidence, when the only point in dispute is as to the weight of the evidence.

Finally, for the purposes of this brief, we shall conclude simply with a statement of the differences between the record in this case and the record in the so-called Willamette Valley case, wherein the doctrine of estoppel as applied by the commission vitiated its order. We have already seen that at the

same time the commission was investigating the rates complained of in its dockets Nos. 1327, 1329, 1335, and 1348, it was also examining into lumber rates in dockets Nos. 1054 and 1331, all of which dealt with rates upon fir lumber, cedar, shingles, etc. We might also add that only a short time previously it had passed upon an advance in the Tift and Central Yellow Pine cases, and the opinion in these latter two cases of the commission was approved by this court upon appeal. Counsel, in 1327, before the commission, requested that all that was in these various lumber cases, excepting the Tift and Central Yellow Pine cases, should be considered by the commission. To this there was no objection. But in none of these cases now here being argued was there any contention that the carriers had promised, or were under any moral obligation to maintain, the then existing rates.

No such contention was made in these cases before the master or the Circuit Court. It is only since this court held unlawful an order in 1331 that that proposition has been seriously advanced. This court said, as a basis for holding unlawful the rates prescribed from the Willamette Valley to San Francisco, that the commission had decided the case wholly apart from any question of the reasonableness of the rate, and upon the sole ground that the commission believed "it had the right under the law to protect the lumber interests of the Willamette Valley from the consequences which it was deemed would arise from a change of the rate, even

if that change was from an unreasonably low rate which had prevailed for some time to a just and reasonable charge for the service rendered for the future." (219 U. S., 449.)

This court cited the admission of counsel before the commission that he did not claim that the rate was unreasonable in and of itself. No such a condition of record appears in this case. On the contrary, both shippers and carriers offered abundant testimony dealing with the reasonableness of the rates, both in and of themselves, and in comparison with other rates.

We quote from the opinion of this court in that case:

> In the argument at bar the railroad companies do not question that if a complaint is made to the Interstate Commerce Commission concerning the unreasonableness of a rate that it has the authority to examine the subject, and if it finds the rate complained of is in and of itself unreasonable, having regard to the service rendered, to order the desisting from charging such rate, and to fix a new and reasonable rate, to be operative for a period of two years. The companies further do not deny that where the Commission exercises such authority, its finding is not subject to be reviewed by the courts. (*Interstate Commerce Commission* v. *Illinois Central Railroad Co.*, 215 U. S., 452.)
>
> In other words, the argument in behalf of the railroads fully concedes that an order of the Commission is not open to an attack in

the courts so long as that body has kept within the powers conferred by the statute.

This court will search the records of this case in vain to find a parallel situation to that which was condemned in the Willamette Valley case.

Respectfully submitted.

LUTHER M. WALTER,
Special Assistant to the Attorney General.
JESSE C. ADKINS,
Attorney.

OCTOBER, 1911.

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SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1911.

Office Supreme Court, U. S.
FILED.
OCT 13 1911
JAMES H. McKENNEY,
CLERK

THE INTERSTATE COMMERCE COMMISSION, *Appellant*,
vs.
UNION PACIFIC RAILROAD COMPANY, ET AL, *Respondents*. } No. 451

THE INTERSTATE COMMERCE COMMISSION, *Appellant*,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, ET AL, *Respondents*. } No. 452

THE INTERSTATE COMMERCE COMMISSION, *Appellant*,
vs.
GREAT NORTHERN RAILWAY COMPANY, ET AL, *Respondents*. } No. 453

BRIEF FOR RESPONDENTS.

HALE HOLDEN,
Solicitor for Great Northern Railway Co. and Chicago, Burlington & Quincy Railroad Co.

CHARLES DONNELLY,
Solicitor for Northern Pacific Railway Co.

F. C. DILLARD,
Solicitor for Union Pacific Railroad Co. et al.

THE PIONEER COMPANY, ST. PAUL

SUPREME COURT

OF THE

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OCTOBER TERM, 1911.

THE INTERSTATE COMMERCE COMMISSION, *Appellant*,

vs.

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THE INTERSTATE COMMERCE COMMISSION, *Appellant*,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, ET AL, *Respondents*.

No. 452

THE INTERSTATE COMMERCE COMMISSION, *Appellant*,

vs.

GREAT NORTHERN RAILWAY COMPANY, ET AL, *Respondents*.

No. 453

BRIEF FOR RESPONDENTS.

STATEMENT OF THE CASE.

The Appeals:

The Interstate Commerce Commission has appealed from decrees entered by the Circuit Court of the United States for the District of Minnesota on October 13th, 1910, restraining and enjoining the enforcement, in part, of certain orders of the Commission, made on June 2, 1908.

The orders were made in determining the issues raised by certain complaints before it, against rates upon lumber and forest products from the states of Oregon Washington, Idaho and Montana, filed by carriers, to eastern destinations, and required the reduction of said rates and the establishment of lower rates, prescribed by the Commission in lieu thereof.

As will be later seen, the rates in question, as well as the orders dealing with them, comprehended in a general way all eastern destinations to which lumber and forest products from those states are shipped, including chiefly the states in the Missouri and Mississippi River valleys.

Effective on November 1st, 1907, the carriers participating in this traffic filed, as required by law, tariffs advancing rates previously in effect. Complaints were thereupon lodged with the Commission by the Oregon and Washington Lumber Manufacturer's Association, the Pacific Coast Lumber Manufacturer's Association and others. After answers thereto filed, and hearings before it, the

Commission disposed of the controversy by describing an imaginary line beginning at the intersection of the Red River with the Canadian boundary at the town of Pembina, North Dakota, and running thence southwardly along the western boundary of the states of Minnesota, Iowa and Missouri to Kansas City and thence southwardly along the line of the Kansas City Southern Railway to Port Arthur, Texas, on the Gulf of Mexico. All rates to points on and west of this line that had been in effect prior to the tariffs of November 1st, 1907, were ordered restored. To points east of this line, the tariffs filed by the carriers on November 1st, 1907, had advanced the rates not more than 10 cents per hundred pounds; to certain points, as for instance, St. Louis, the advance was 7½ cents. These advances the Commission condemned, but permitted an advance not to exceed 5 cents per hundred pounds.

The decrees appealed from dealt with the rate basis upon the division of territory thus made by the Commission. Following the recommendation of the Master that as to the rates ordered to points on and west of the Pembina line, no injunction should issue, but that as to the rates east of said line, the orders were beyond the power of the Commission and should be annulled, the Circuit Court issued its injunction against that portion of the orders only and the appeals are taken by the Commission from the decrees thus entered.

The Parties and Complaints before the Commission:

Before the Commission, the Lumber Associations above named, joined by sundry lumber companies and individual manufacturers of lumber, shingles and other forest products and comprising representative producing and shipping interests in the states of Washington and Oregon, were the complainants. The carriers are those originating the traffic, to-wit, the lines comprising the Union Pacific and Southern Pacific systems from Portland, Oregon, and points south thereof, and the Great Northern Railway Company and the Northern Pacific Railway Company, from Portland and all coast and interior points north thereof; these originating lines, with the Chicago, Burlington and Quincy Railroad Company and other connections carry the traffic to Denver, Omaha, St. Paul, Chicago, St. Louis and many other interior and eastern points. Opposite the title page of this brief is a map showing some of these routes, the producing and consuming territories, and the different rate bases, old and new, in issue before the Commission.

Complaint No. 1327 brought by the Oregon and Washington Lumber Manufacturers' Association, et al., involved mainly the interests of Oregon producers and shippers and will be referred to as the Oregon Case.

Complaints 1329 and 1335 brought by the Pacific Coast Lumber Manufacturers' Association, et al., and the Southwest Washington Lumber Manufacturers' Association, et al., related to interests of shippers in the state of Washington and will be referred to as the Washington Case. These two complaints were consolidated and determined in one opinion and order.

Complaint No. 1348 was brought by the Potlatch Lumber Company, et al., representing lumber shipping interests in Eastern Washington and Idaho in the vicinity of Spokane, from which point a differential basis of rates, lower than the Coast basis, is involved. It will be referred to as the Potlatch case, but as the scale of differentials fixed by the Commission is not in litigation and depends upon the Coast basis, little reference will be necessary to that case.

The opinions filed by the Commission in these proceedings are reported in 14 I. C. C. 1, 23: 41, and are printed as exhibits to the answers of the Commission to the several Amended Bills of Complaint.

(No. 451, I. C. C. v. U. P. R. R. Co., et al, Trans. Rec. p. 44,

No. 452, I. C. C. v. N. P. Ry. Co., et al, Trans. Rec. p. 43,

No. 453, I. C. C. v. G. N. Ry. Co., et al, Trans. Rec. p. 45.)

The Bills of Complaint.

Conceiving it to be necessary, the carriers affected by these orders, brought their three separate bills of complaint against the three separate orders. In this court they may be identified as follows:

No. 451, I. C. C. v. U. P. R. R. Co., et al, relates to the order in the Oregon Case,

No. 452, I. C. C. v. N. P. Ry. Co., et al, relates to the order in the Washington Case.

No. 453, I. C. C. v. G. N. Ry. Co., et al, relates to the order in the Potlatch Case.

For all purposes in the court below, the cases were treated as one and they may be so treated upon these appeals. References hereafter will be to the allegations in the Amended Bill of Complaint in Case No. 451, I. C. C. v. U. P. R. R. Co., et al, (Vol. A, page 7.)

Passing the preliminary paragraphs of the bill relating to incorporation, citizenship, location, etc., of the complainants, the facts relating to the venue of the suits, paragraph III of the bill recites by reference, the tariffs covering the eastbound transportation of lumber and forest products that were in effect on and immediately prior to October 31, 1907. These tariffs were filed as exhibits to the bill of complaint in the Court below; there were eight in number.

Paragraph IV of the bill recites the filing of the tariffs of November 1st, 1907, with appropriate

references to titles, numbers and points of origin and destination. These tariffs were also filed as exhibits to the bills in the Court below and all said tariffs being very voluminous, their substance was incorporated in the bills by reference only.

Paragraph IV of the bill also describes the classification in these tariffs, of the different forest products, into groups A, B, C and D, as follows:

> Group A comprises shingles.
>
> Group B comprises lumber, poles, piling and timbers of cedar of single car lengths and certain articles manufactured from cedar.
>
> Group C comprises lumber, poles, piling and timbers of fir, hemlock, larch, pine and spruce of single car lengths and certain articles manufactured therefrom.
>
> Group D comprises long timbers, poles, piling or lumber requiring two or more cars for transportation.
>
> Note—The tariffs show that rates of transportation on these different groups vary somewhat in a fixed relation, according to the character of the articles thus grouped; for instance, the rates on shingles are ordinarily higher, usually by 10 cents, than the rates on fir lumber. It will not be necessary to further pursue these differentials because no question is involved in this litigation thereon. In all further discussion the rates on fir lumber, which comprises the largest item of traffic in these groups, will be used.

Paragraph V of the bill asserts that upon the filing of the tariffs of November 1st, 1907, the rates

therein complained of became the only lawful rates for the transportation of these commodities and that the same then were and at all times since have been, low for the service rendered and in no wise unreasonable or unjust.

Paragraph VI of the bill recites the filing shortly thereafter of the complaints before the Commission, the answers thereto by the carriers, the hearing of evidence, and the submission of the issues to the Commission on March 21, 1908.

Paragraphs VII, VIII, IX, X and XI recite the main order of the Commission upon the particular complaint referred to, together with certain other orders, extending the period of time when the rates prescribed by the Commission were required to be made effective by the carriers to October 15, 1908. In addition to these extension orders, other orders affecting the main order are recited.

As heretofore stated, the issues under the so-called Potlatch case related to differentials in the rates from the Spokane territory in eastern Washington, under Coast rates; for this reason and on account of these differentials, the order in the Potlatch case is related to the orders in the Coast Rate Cases.

In addition thereto, there were pending at the same time, before the Commission, two other proceedings involving lumber rates, one entitled "Pacific Coast Lumber Manufacturer's Association, et al, against the Northern Pacific Railway Company,

et al," No. 1054, involving a demand for the establishment of joint rates and through routes from points on the Northern Pacific and Great Northern lines, north of Portland, through Portland, via the lines of the Oregon Railroad and Navigation Company and other lines, to points in Utah and beyond, which is known as the Portland Gateway case.

The other proceeding was entitled "Western Oregon Lumber Manufacturer's Association, et al vs. Southern Pacific Company, et al." (No. 1331), involving rates on the fir lumber of the Willamette Valley of Oregon, Portland and south, to San Francisco and bay points. This is the proceeding that was the subject of the Opinion of this Court in "The Southern Pacific Company, et al, vs. Interstate Commerce Commission," No. 527, October Term, 1910, decided February 20, 1911, Mr. Chief Justice White delivering the opinion.

There were thus five proceedings pending before the Commission involving rates upon lumber from Oregon, Washington, etc., to substantially all interstate destinations, east and south of the producing territory. As in the Willamette case (so-called), the rates were those under which the traffic was moved south to San Francisco, in these cases, the east-bound rates were the subject of the complaints and orders. It will be seen that the rates here involved covered the territory from the Canadian Boundary, southward as far as Medford,

Oregon, 359 miles south of Portland, including all of the Willamette Valley. (Opinion of Commission, Vol. A, No. 451, p. 61.)

All of these proceedings were under consideration by the Commission at the same time and were decided together. The opinions in the Portland Gateway and the Willamette Valley cases were filed on June 1, 1908, and those in the three cases now under consideration, on June 2, 1908.

These five opinions defined a complete scheme of rates for the movement of all of the lumber and forest products of this territory to substantially all destinations.

The carriers accepted the order in the Portland Gateway case without litigation, but, unable to agree to the justice of the orders in the other cases, brought proceedings to test their validity. The result in the Willamette Valley case appears in the opinion of this Court (supra) and these appeals remain for determination.

Proceeding with the consideration of the bill of complaint:

Paragraph XII of the bill alleges that the effect of the order of the Commission in the Oregon case (the same being true in the Washington case) was to reduce the rates fixed by the tariffs of November 1st, 1907, substantially five cents per hundred pounds and in some instances more.

Paragraphs XIII and XIV of the bill charge that certain provisions of the Amended Act to Regulate

Commerce are in violation of certain provisions of the Constitution of the United States. The issues raised by these allegations in the bill are not before the Court on these appeals and further reference thereto need not be made.

Paragraph XV of the bill alleges that under Section 15 of the Amended Act to Regulate Commerce the only authority vested in the Commission to fix rates is when, after full hearing, it finds that the existing rates are unjust or unreasonable, upon which finding it is then authorized to determine and prescribe just and reasonable rates in lieu thereof. The paragraph charges that the orders in these cases are unauthorized and void, for the reason that the rates contained in the tariffs of November 1st, 1907, were not in excess of just and reasonable charges and for the further reason that upon the hearing before the Commission,

> "no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust or unreasonable, and the defendant Interstate Commerce Commission entered its said orders without any justification therefor, and without any evidence or finding of fact that said rates so fixed by said defendant were excessive, unjust or unreasonable."

Paragraph XVI of the bill alleges that the rates in effect prior to the tariffs of November 1st, 1907, were substantially the same rates that had been fixed by the carriers in the year 1893, and that, sole-

ly by reason of the fact that said rates had been long continued, was the conclusion reached by the Commission, that the rates complained of, in the tariffs of November 1st, 1907, which were higher than the rates theretofore in effect, were unreasonable and unjust, and solely by reason of that fact were the orders so entered by the Commission.

This pharagraph of the bill proceeds to aver that it was established before the Commission by uncontradicted evidence that the circumstances and conditions existing at the time the previous rates were established in 1893, had completely changed and had not existed for some time prior to the advance in rates on November 1st, 1907; that it was further established before the Commission, that in 1893 when the previous rates were fixed, the manufacture and eastward shipment of lumber from the states in question was in its infancy; that at and for some time thereafter, the ample supply of lumber from the states of Michigan, Wisconsin and Minnesota, and from the Yellow Pine districts of the south, completely supplied the demands for lumber in the states of the Missouri and Mississippi valleys, whereby lumber from the states of Oregon and Washington could not be shipped in competition therewith in any considerable amounts, at rates higher than those then established, but that the conditions in this respect had been completely changed.

It is further alleged that all of these conditions and the changes therein were expressly found to be true by the Commission.

It is further alleged that prior to the year 1893, the rates on lumber and forest products to Omaha, St. Paul and other eastern destinations were higher than those established in 1893, and that under said higher rates little, if any, lumber from the Coast states moved eastward; but that following the reduction in rates made in 1893, the lumber interests in Oregon and Washington increased enormously and many mills were built in the interior, so that at and for several years prior to the hearing, eastbound shipments of lumber to the destinations in question, amounting to a large percentage of the output of said states, were being made in increasing volume; that the prices of manufactured lumber since 1893, had greatly increased, resulting in increased profits to the manufacturer, from the markets thus secured to him, through said reduced rates and the general advances in lumber prices in said markets during the years aforesaid.

It is further alleged that the Commission found that each and every one of the conditions surrounding the lumber industry on the Coast had completely changed from the time said rates were established in 1893 and it is alleged that the changes aforesaid and the prosperous condition of the in-

dustry on account thereof, did not require nor justify the further maintenance of rates so low as those established in 1893.

It is further alleged that it was shown by uncontradicted evidence and found as a fact by the Commission, that when the rates were reduced in 1893 and for some years thereafter, the great volume of traffic moving over the lines of railway in question, was westbound, and that the states of Oregon and Washington and the neighboring territory furnished insufficient traffic to load eastbound the cars employed in moving the westbound traffic. It is asserted that the reduced rates on lumber as fixed in 1893, were so fixed at an abnormally low point, not only for the purpose of building up the industry, but also were made possible and justified by the existence of large numbers of cars made empty from westbound shipments to the Coast, and in order to furnish eastbound loads for said cars, which would have otherwise been returned eastward without revenue producing freight, but that for some time prior to November 1st, 1907, this condition had so changed that it had become necessary to haul empty cars in large numbers to these coast states, in order to furnish facilities for the eastbound movement of lumber and forest products shipped therefrom.

It is further alleged that every other important element in the cost of transporting the commodities in question had greatly increased over the cost

of 1893 and subsequent years. All of these changed conditions, it is alleged were found to be true by the Commission; that the Commission found that the direction of the empty car movement in the years intervening since 1893, had been reversed, and that the carriers for some time prior to November 1st, 1907, had been compelled to haul westbound, large numbers of empty cars for the purpose of furnishing equipment in Oregon and Washington for the traffic in question; that the Commission, not only found that the volume of lumber traffic shipped eastbound over these lines, had enormously increased, and that the lumber interests engaged in said traffic, had been extraordinarily prosperous, but also, that the density of traffic on the lines of these carriers had so increased as to be more than could be advantageously handled on single track roads, such as the lines in question substantially are, and that because of this great increase in density, these carriers had been compelled to and were then engaged in constructing double track extensions, in order more advantageously and expeditiously to handle this increased traffic.

It is further alleged that the Commission found that the other expenses of operating these railways had also greatly increased in recent years, especially the cost of labor and material, over and above the expense of operation as it had existed at and for some years after the year 1893, and

further found that the increased traffic had required additional working force and equipment; all such facts so found, supported and confirmed the allegations in the answers of the railroads before the Commission and the evidence offered in their behalf before it, that all of the conditions and circumstances under which the reduction in rates had been made in 1893, had completely changed.

This paragraph in the bill finally alleges that notwithstanding these affirmative findings, and the uncontradicted proof thereof, of the complete change in conditions, the Commission held as a matter of law, that the continuance of said low rates of 1893 raised a presumption that the higher rates of November, 1st, 1907, were unjust and unreasonable, wherein said Commission acted erroneously and through a mistake and under a misapprehension of the law and without authority.

Paragraph XVII of the bill alleges that the rates fixed by the carriers in the tariffs of November 1st, 1907, were lower than the rates charged for any like service by any carriers in the United States and lower than rates theretofore fixed by the Commission for like services; that the rates fixed by the Commission in these cases are unremunerative and confiscatory, and are not and will not be sufficient to pay the cost of conducting the transportation and any just or fair return upon the value of the property used therein; that said rates so fixed bear no fair nor just relation to the rates on other traffic

moving over these lines of railway and that the enforcement of the orders of the Commission will impose an undue and unreasonable burden, not only upon the carriers, but upon the shippers of other commodities and will deprive the carriers of revenue from the transportation of lumber and forest products to which they would be entitled under the rates of November 1st, 1907, in the Oregon case, of more than $600,000 and similarly large sums in Washington and Potlatch cases.

It is further alleged in Paragraph XIV of the bill that the rates established in the tariffs of November 1st, 1907, were low, just and reasonable rates for the services performed, and that the rates prescribed by the Commission in lieu thereof, are and each of them is, unjust and unreasonable and inadequate compensation for the services rendered.

THE ANSWER OF THE COMMISSION.

(Par. XIV.) Answering the allegations in Paragraph XIV of the bill, in relation to the rates established by the carriers and those fixed by the Commission, the Commission denied that the rates established by it were either unjust or unreasonable within the meaning of the Fifth Amendment to the Constitution, and avers that the Court cannot and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning.

Paragraph XIV of the answer also avers certain special defenses:

> (a) That the complainants should not be heard to maintain this suit for that they have a complete and adequate remedy by proceedings before the defendant (the Commission) upon application for a rehearing whereby, upon a proper showing, the Commission under its power, might suspend, modify or amend the orders complained of; and that in advance of such application the complainants are not entitled to invoke the jurisdiction of this court in equity.
>
> (b) That the court should not hear and determine the rights of the complainants upon any state of facts which were within their knowledge and which they failed and neglected to present before the Commission at the time of the hearing; nor on account of any facts or knowledge which may have arisen since said hearings unless the same be first presented by application for rehearing to the defendant.

The defendant further charges in its answer that it is vested with the exclusive right and power of determining what are just and reasonable maximum rates to be charged on this traffic, and that the reasonableness of such rates is not open to judicial inquiry upon original evidence leading to an independent conclusion. That the determination of what are just and reasonable maximum rates to be charged in the future is a matter of discretion, and that the court ought not to and cannot substitute its judgment and discretion for

that of the defendant, but that the court will only determine whether the rates prescribed by the Commission are just and reasonable within the meaning of the constitutional guaranty above referred to.

Paragraph XV of the answer puts in issue those allegations of the corresponding paragraph of the bill, regarding the reasonableness of the rates of November 1st, 1907, and the unreasonableness of the rates fixed by the Commission. It also denies that the Commission entered its orders without evidence before it or finding that the rates complained of were unreasonable. It alleges, on the contrary, that evidence was offered before it showing and tending to show that the rates complained of and condemned by it were unjust and unreasonable and that such was its opinion; that in accordance therewith it made a report in writing on the subject and stated its conclusions therein, referring thereby to its opinions in each of the cases, and it says:

> "that the facts shown by said investigation, material to be considered by this defendant, are stated fully, fairly and completely in said report."
>
> (Note—From this express averment, that the opinions as rendered by the Commission fully, fairly and completely state the facts which it deemed material to be considered, in the subsequent analysis of the character of the

> power attempted to be exerted by the Commission, it must necessarily follow that the facts as recited in the opinion were all of the facts that did govern and control the Commission in reaching its conclusions. Further light, however, upon the true nature of the power sought to be exercised will be thrown by a consideration of the character and substance of the proof in the record before the Commission.)

Paragraph XV of the answer further expressly avers that while the matters and things embraced in each of the three proceedings now under consideration, were pending before it, there was also pending for determination, similar matters and things in the so-called Portland Gateway Case, above described, involving joint rates and through routes from points north of Portland to Utah common points; and the Willamette Valley case, so-called, involving rates on fir lumber from Portland and points south to San Francisco. It is alleged that by agreement before it, in the three cases under review,

> "any and all matters and things presented to this defendant in the hearing in said other cases might, and should be considered by this defendant with the same force and effect as if the same had been formally presented and made part of the record,"

in the three pending cases.

That is to say, it is averred that by agreement, the Commission was permitted to, and it is to be presumed from its answer that it did, consider all the evidence in all of the cases then before it, in reaching its conclusions as to lumber rates, in its opinion just and reasonable, to all destinations, eastbound and southbound, from this general producing territory. It follows from this allegation in the answer, that all of these five proceedings were weighed, considered and determined as one general subject.

Paragraph XVI of the answer alleges that there was some conflict in the testimony and evidence before the defendant; that each and every member thereof gave personal attention to the testimony and heard the parties in oral argument, examined and considered the various matters of fact and arguments contained in the briefs, and that the opinions and orders are the result of painstaking consideration and care on the part of each member.

It is again averred that the Commission is vested with exclusive power of determining reasonable rates, subject to review by the courts, only in the event that,

> "it be made clearly to appear that the orders complained of transcend the pale of legitimate regulation and constitute such a violation of the constitutional rights of the carriers as to shock the conscience of a chancellor."

Paragraph XVII of the answer denies that the rates fixed by the orders are unremunerative and

confiscatory in any sense; it avers that the rates so established are higher than the rates voluntarily established by the carriers for the same transportation, covering a long period of years. It avers that the complainants for the last ten years have received from their operations, as common carriers, munificent returns upon the property invested and that such returns are far above the average received by carriers in other parts of the United States.

Laying aside the special defenses pleaded, the substance of the answer may fairly be stated to be as follows:

(a) that the power of the Commission in determining rates is a wide discretion limited only by the provisions of the Fifth Amendment to the Constitution, and, indeed, only then limited by "such a violation of the Constitutional rights of the carrier as to shock the conscience of a chancellor." Its determinations are beyond review of the courts except upon that ground.

(b) the rates prescribed by the Commission are neither unremunerative nor confiscatory because they are higher than the rates voluntarily established by the carriers for the same transportation covering a long period of years.

(c) the carriers affected by the orders during the last ten years have received from their operations as common carriers, munificent returns far above the average received by carriers in other parts of the United States.

(d) there was evidence before it tending to show that the rates of November 1st 1907, were unreasonable.

Other than the foregoing, the answer is a denial of the allegations of fact contained in the bill. Replication was duly filed.

ISSUES BEFORE COMMISSION.

It has been seen that one of the charges in the bill of complaint (Par. XV) is that,

> "no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust or unreasonable, etc."

It will be seen that the Master found that there was no substantial evidence before the Commission, or before him, tending to prove that the advanced rates of November 1, 1907, were unreasonable. (Vol. A, No. 451, p. 111).

From the inception of this litigation, the complainants have insisted that the Commission acted beyond its power, arbitrarily or under a misconception of its power, in ordering these rates reduced and that instead of determining the question within its power whether for the service rendered, the rates of November 1, 1907, were reasonable, in fact, it condemned those rates and required lower rates to be published (1) because the lumber industry had enjoyed the lower rates for many years and investments had been made upon the faith thereof and loss of business, investments, profits and markets would result from the advance, (2) because the long continuance of

the old rates created a presumption that they were reasonable and adequate. Notwithstanding the uncontradicted and overwhelming proof of marked change in conditions, making for tremendous increases in transportation cost, of which the reversal in the empty car haul was the most significant item, the Commission rested its decision in great degree, upon an erroneous view of the permanence of this presumption, and allowed it to persist and overturn ample and convincing proof that completely rebutted it. Finally, (3) because they believed that the carriers on their whole business were receiving sufficient revenue.

> NOTE—The dissenting opinion of Chairman Knapp and Commissioner Harlan, Vol. A, No. 451, p. 62, lends strong support to these conclusions, especially when read in connection with the majority opinions. These will be later considered in connection with an analysis of the character of proof in the record.

COMPLAINTS BEFORE COMMISSION.

In order to obtain a correct view of the position taken by the Commission in deciding these issues, it will be important to examine the complaints filed before it.

By stipulations entered into in the court below, the entire record before the Commission was offered and considered in evidence. (Vol. 2, p.

778; Vol. 3, p. 911.) In addition to the abstract of oral testimony and exhibits agreed upon and offered before the Master, it was stipulated that any reports and documents on file with the Commission or referred to on the hearing before it, might be referred to and printed for use of the Master or Court.

Under the terms of these stipulations we print below certain paragraphs from these complaints which will indicate in part, at least, the character of the issues brought by the complaining shippers before the Commission.

It is not denied but that each of the complaints charged in definite language, that the advanced rates were unreasonable and excessive; neither is it denied that there is language in the opinions of the Commission which, if segregated from the whole and read without reference to the substance of the complaints, and the character of the proof that was offered in support thereof, would indicate that in deciding the cases, the Commission concerned itself only with the reasonableness of the rates in and of themselves with regard to the service rendered. When the entire proceedings are analyzed, however, the ultimate question on these appeals of the real character of the power exercised will arise and it will be seen that the Circuit Judges in the Court below were correct in holding that the Commission acted beyond its power.

Paragraph XII of the Oregon complaint charges that the advanced rates were established by unlawful concert of action and were unjust and unreasonable and not made necessary by reason of any conditions affecting the business of the carriers or the transportation of forest products, and proceeds:

> "that the imposition and collection of said rates will render the business and plants of complainants and those similarly situated in the State of Oregon and other points and places in the Pacific Northwest of but little value and subject complainants to great and irreparable loss."

It also says:

"XIV.

"That the manufacture of lumber and other forest products constitutes one of the largest and most important industries in the State of Oregon and in the other Pacific Northwest States. Complainants and others engaged in the lumber business in the State of Oregon, have invested in plants, machinery, equipment and appurtenances a large sum, to-wit: the sum of sixty million dollars ($60,000,000) or thereabouts, not including the value of material on hand, logs, standing timber or timber lands; than more than forty thousand (40,000) persons in the State of Oregon are directly engaged in said industry; that the annual pay roll exceeds twenty million dollars ($20,000,000), and approximately about one-fourth of the total number of wage earners in the State of Oregon are directly connected with

the lumber and timber industries in said State and that the entire population of said State is affected vitally and almost directly by the continuance and prosperity of said industries; that the annual output of lumber of the State of Oregon exceeds two billion (2,000,000,000) feet, of the value at the mill of thirty million dollars ($30,000,000), or thereabouts; that the amount of freight paid annually on rail shipments from points in the State of Oregon to points in other States approximates twelve million dollars ($12,000,000). Said estimates being based on the movement by rail of six hundred million (600,000,000) feet of lumber representing about thirty thousand (30,000) carloads."

"XV.

"Complainants show that a large part of the investment in the lumber industry in the State of Oregon was made upon the faith that the rates of freight heretofore in effect to the consuming markets and which were voluntarily placed in effect many years ago by all said defendants, would not be increased, but rather, in view of the fact that the general trend of rates has been downward for a number of years, and of the marked increase in the tonnage of lumber, said rates would be decreased."

"XVI.

"That the rates on lumber heretofore in effect were voluntarily established by the defendants and other connecting railroads in about the year 1893 and have since been continuously in effect with substantially no changes, and complainants relied upon the presumption that the rates were reasonably high and com-

pensatory, and that the same would not be advanced to the detriment of the shippers and the public in the absence of some urgent and impelling cause such as would justify the advance.

That the complainants and other lumber manufacturers in the State of Oregon and the Pacific Northwest have, at great expense, and in many cases at the instance and on the solicitation of the representatives of the defendant railway companies, spent large sums of money in introducing the lumber products of the northwest into the markets of the States and Territories hereinbefore mentioned, and under the advanced rates imposed by said tariffs will be able to sell but little if any of their said products in said States and territories, not only to their great loss and damage, but to the loss and damage of all the consumers of lumber in said States and Territories."

"XVII.

"That encouraged and induced by said action and conduct of the defendants and relying upon the good faith of the same and that the rates then in force and voluntarily placed in effect by all of said defendants would be continued, many of complainants and other persons, firms and corporations engaged in the business of manufacturing lumber and forest products, constructed and equipped their mills, as said defendants have all along well known, and many of complainants and others similarly situated would not have made such investments had it not been for said encouragement given them by the defendants and had it not been for the tariff rate thus voluntarily established and put into effect by them and had it not been that complainants fully relied upon

the good faith of said defendants and believed that said tariff rates would be continued.

That said increase shown by said tariffs of said defendant companies, and other conecting carriers, is destructive of, and highly injurious to, the business of the complainants and others similarly situated and largely impairs the value of their property by the placing of unnecessary and grievous burden and tax upon the transportation of their products by rendering practically inaccessible their available markets and defeating equal competition in said large territory without any cause.

That said unjust and unlawful increase imposes upon the forest products shipped by complainants and others similarly situated, so carried as interstate commerce under like circumstances and conditions, an excessive burden out of line with and far more grievous than is charged for the same products from other points as aforesaid or for other products and commodities of like weight, cost of carriage, value of product, service and all other conditions considered."

"XXI.

"That the lumber manufacturers of the State of Oregon, and of other North Pacific States come in competition with the lumber manufacturers of the yellow pine district in the Southern States, in all of the territory west of Chicago and with the lumber products of the States of Wisconsin and Minnesota and adjacent States in the Chicago territory and territory north and west of said point as far as St. Paul.

That under the tariffs heretofore in effect from what is known as the yellow pine district and the white pine district to said territories

said lumber manufacturers of the State of Oregon and the Pacific Northwest, and under said new tariff competition will be practically eliminated on the greater portion of the lumber products in said territory to the great loss and disadvantage, not only of the lumber manufacturers and producers of the Northwest, but to consumers of lumber and forest products in all of said territories."

The Washington complaint proceeds as follows, after allegations that the advanced rates are unjust and unreasonable:

"V.

"The manufacture of lumber, and other forest products, constitutes one of the largest and most important industries in the State of Washington and the Pacific Northwest. Petitioners, and others engaged in the lumber business in the State of Washington, have invested in plants, machinery, equipment and appurtenances a large sum, to-wit, the sum of one hundred million dollars ($100,000,000), not including the value of material on hand, logs, standing timber, or timber lands; that more than ninety thousand (90,000) persons are directly engaged in said industry; the annual pay-roll exceeds sixty million dollars ($60,000,000); that approximately two hundred thousand (200,000) people are directly dependent for their livelihood upon said industry; the annual output of lumber exceeds four billions (4,000,000,000) feet of the value at the mill of sixty-five million dollars ($65,000,000), while the annual output of shingles exceeds in value at the mill seventeen million dollars ($17,000,000); that the amount of freight paid annually on shipments from points in the State

of Washington to points in other states approximates twenty-five million dollars ($25,000,000), said estimate being based on the movement of one billion, one hundred million (1,100,000,000) feet of lumber, representing about seventy-six thousand five hundred (76,500) carloads, and thirty-four thousand one hundred and twenty (34,120) carloads of shingles.

That the annual output of lumber, including shingles, exceeds in value and importance that of any other industry in the State of Washington; the annual output of lumber being of the value of eighty-two million dollars ($82,000,000); while the next highest industry, grain, is valued at forty million dollars ($40,000,000); fish at fifteen million dollars ($15,000,000); and coal at ten million dollars ($10,000,000)."

"VI.

"Petitioners show that a large part of the investment in the lumber industry was made upon faith that the existing rates of freight to the consuming markets would not be increased, but rather decreased, in view of the fact that the general trend of rates has been downward for a number of years; and in view of the further fact that the marked increase in the tonnage of lumber should result in lower rates. Petitioners allege, upon information and belief, that rates generally in the United States on the average of all traffic have been reduced not less than twenty per cent within the past twenty years, and they charge that the transcontinental rates have declined in even a greater proportion; and in support of this allegation it is shown that the rate per ton mile on all traffic of the defendant Northern Pacific

Railway Company decreased from .099 in 1900 to .083 in 1906, a decrease of 16.1 per cent in six years; and the rate on lumber not having been reduced, the decrease relative to all other traffic is materially greater than the figures indicate. Petitioners show that the last existing rates on lumber were voluntarily established by the carriers in the year 1893, and have since been continuously in effect; and they submit that they had a right to rely upon the presumption that the rates were reasonably high and compensatory, and that they would not be advanced to the detriment of the shippers and the public, in the absence of some urgent and impelling cause such as would justify the advance. Under the previous tariffs, as they existed for fourteen years, the rates were: On fir, spruce, and hemlock, to St. Paul, 40c a hundred pounds; to Omaha, 50c; and to Denver 40c; on cedar and cedar shingles, to St. Paul 50c; to Omaha 60c; and to Denver, 60c on shingles and 50c on lumber. Under these rates it was difficult for the lumber manufacturers of Washington to compete in the markets named with other woods which were and are accorded a more favorable rate of freight; and they could only compete in such other woods in Chicago, Detroit, and other consuming markets in the north-central and other states, by shrinking the value of their product to a point where there was little or no margin of profit. Only the higher grades of lumber could move under then prevailing rates to consuming territories in other states, so that in order to obtain these marketable grades something like twenty millions of dollars ($20,000,000) in value representing approximately 53,000 carloads, were being annually wasted in the destruction of smaller timber and of

the lower grades of lumber that could be serviceably used in the consuming markets, if the rates of freight then or now permitted the movement. Petitioners submit that this great waste affects not only the interests of those engaged in the lumber industry, but is a matter of national public concern."

"IX.

"The said advance in part in the rates on lumber and shingles amounts to ten cents a hundred pounds to St. Paul, Denver and Chicago; seven and one-half cents a hundred pounds to St. Louis; and five cents a hundred pounds to Omaha and Kansas City, and to a lesser sum to intermediate territory and other points and places; as shown by statements hereto attached, marked exhibits "A," "B" and "C," which statements show the prior rates and the advanced rates to certain of the markets above named, based upon the published tariffs of the defendants.

Petitioners further show that the said advance in rates does and will greatly injure and to a large extent destroy the lumber industry in the State of Washington, and will result in irreparable injury to your petitioners and others engaged in this business within this State and the Northwest Pacific Coast, as well as work a serious detriment to the public interests. The advance amounts to Forty-eight ($48.00) Dollars a car on lumber, and Thirty-six ($36.00) Dollars a car on shingles to St. Paul and Denver, Chicago and other Eastern markets, and to a smaller sum to intermediate points and places, which is excessive, unreasonable and unjust and more than the traffic can bear. Petitioners and other manufacturers of lumber on the North Pacific Coast will

be and are utterly unable to compete with other and more favored woods in the markets of the middle and north central states, which markets now take and consume a large amount of the Pacific Coast product. The said advance in rates does and will continue to drive the Pacific Coast lumber from these markets and will and does greatly restrict the territory within which it can find a market. From information derived by petitioners from dealers in fourteen states to which petitioners have heretofore shipped large quantities of lumber; it is shown that the markets in those states will be and are practically destroyed. The mills in this state and territory will be and many are already forced to shut down, or to dispose of their product at ruinous prices. Coastwise and foreign markets are now very unsatisfactory, and should the normal product of existing mills be forced upon the local and nearby markets, or offered for local or foreign trade, the result will be a complete demoralization in prices which will be disastrous in its effect upon the lumber industry and result not only in great and irreparable loss to the manufacturers, but also in great depreciation in the value of timber lands. Interstate shipments will be confined to the very highest grades of lumber, and in consequence the waste necessary to secure these grades will be very great. The advance will deprive the public in the great consuming territories of the benefit of obtaining Pacific Coast lumber, for that in view of the competitive conditions neither the dealer nor the consumer in such territory will or can be required to absorb the advance; and as herein shown, the Pacific Coast manufacturer cannot deduct the advance in rates from the selling prices of his product."

The Southwestern Washington complaint (consolidated in the opinions of the Commission with the main Washington case) likewise alleges:

"XI.

"That the manufacture of lumber and other forest products constitutes one of the largest and most important industries in Southwest Washington. Complainant and others engaged in the lumber business in said territory have invested in plants, machinery, equipment and appurtenances more than $10,000,000.00, not including the value of material on hand, logs, standing timber or timber lands. That more than Ten thousand (10,000) persons in said territory are directly engaged in said industry and approximately one-half of the wage earners in said territory are directly connected with the lumber and timber industries and that the entire population of Southwest Washington is, to a great extent, dependent upon the lumber and timber industries."

"XII.

"Complainant shows that a large part of the investments in the lumber industry in Southwest Washington was made upon the faith that the rates of freight heretofore in effect to the consuming markets and which were voluntarily placed in effect many years ago by all said Defendants would not be increased, but rather, in view of the fact that general trend of rates has been downward for a number of years and of the marked increase in the tonnage of lumber, said rates would be decreased.

Complainant alleges that substantial reductions in freight rates generally in the United States, on the average of all traffic, have been

made in the past twenty years, and that the rate per ton per mile, on all traffic of the Defendants has decreased during the last ten years. That as illustrative of said decrease the rate per ton per mile on all traffic of certain of the Defendants for the years 1900 and 1906 was as follows:

	1900	1906
Northern Pacific Railway Company	.1047	.0828
Chicago, Burlington & Quincy Railroad Company	.085	.081

That a substantially like decrease has been made on all traffic of the other Defendants during said period.

That the rate of freight charged for the transportation of lumber during said period has not been reduced, and because lumber constitutes a large proportion of the traffic of said Defendant Companies, the general decrease above set out is relatively materially greater on all other traffic than the above table would indicate."

"XIII.

"That the Complainant and other lumber manufacturers in the State of Washington and the Pacific Northwest have, at great expense, and in many cases, at the instance and on the solicitation of the representatives of the Defendant Railway Companies spent large sums of money in introducing the lumber products of the Northwest into the markets of the States and Territories before mentioned, and under the advance rate imposed by said tariffs, will be liable to sell little if any, of their said pro-

ducts in said States and Territories, not only to their great loss and damage, but to the loss and damage of all the consumers of lumber in said States and Territories."

"XIV.

"That encouraged and induced by said action and conduct of the defendants, and relying upon the good faith of the same, and that the rates then in force and voluntarily placed in effect by all of said defendants would be continued many of complainants and other persons, firms and corporations engaged in the business of manufacturing lumber and forest products, constructed and equipped their mills as said defendants have all along well known and many of complainants and others similarly situated, would not have made such investments had it not been for said encouragement given them by the defendants, and had it not been for the tariff rates thus voluntarily established and put into effect by them and had it not been that complainants fully relied upon the good faith of said defendants and believed that said tariff rates would be continued. That said increase shown by said tariffs of said defendant companies, and other connecting carriers is destructive of, and highly injurious to the business of the complainant and others similarily situated and largely impairs the value of their property by the placing of unnecessary and grievous burden and tax upon the transportation of their products by rendering practically inaccessible their available markets and defeating equal competition in said large territory without any cause.

That said unjust and unlawful increase imposes upon the forest products shipped by complainants and others similarly situated so car-

ried as interstate commerce under like circumstances and conditions an excessive burden out of line with, and far more grievous than is charged for the same products from other points as aforesaid or for other products and commodities of like weight, cost of carriage, value of product, service and all other conditions considered."

"XVIII.

"That said tariffs herein specified and in effect just prior to the 1st day of November, 1907, always have been, and still are more than fair, just, reasonable and remunerative for the defendants, and each of them, and that the tariff earnings of each and all of said roads are and have been for many years past, constantly increasing; that the defendants and each of them have from time to time materially and substantially increased their net revenue and profits and their net surplus under their tariffs formerly in effect, and at all times have been and still are earning large profits by means of said tariffs, so that no increase over the rates on lumber and forest products heretofore in effect is reasonable or should be permitted.

That said proposed advance in rates herein specified and complained of is not made necessary by reason of any changed conditions affecting the transportation of forest products, or the service required in connection therewith or the financial condition of the defendants.

That said proposed new rates discriminate against complainant and subject complainant and the various localities in which they conduct their business to undue and unreasonable prejudices and disadvantages and give un-

due and unreasonable preference and advantages to persons other than complainant and those similarly situated and to localities other than those wherein complainants transact their business, all in violation of the provisions of the act entitled "An Act to Regulate Commerce," approved February 4, 1887, and the Acts amendatory thereof and supplemental thereto."

"XXI.

"Complainants further show that the proposed advance in rates will greatly injure, and to a large extent destroy, the lumber industry in the State of Washington and will result in irreparable injury to complainants and to others engaged in business within the State of Washington, and the Pacific Northwest Coast States, as well as be a serious detriment to the public interest. The advance in rates which is about to be put into effect by the defendants will amount to about Fifty Dollars ($50.-00) on each carload of lumber, and about Thirty-six Dollars ($36.00) on each carload of shingles to St. Paul, Denver, Chicago and other eastern markets which said advance is excessive, unreasonable and unjust, and more than the traffic can bear.

That said advance would deprive the public in the great consuming territories in the United States to which said product is now shipped of the benefit of obtaining Pacific Coast lumber for that in view of the competitive conditions now existing, neither the dealers nor the consumers in such territory will or can be required to absorb the advance, and the Pacific Coast manufacturer would be unable to advance the prices of said lumber sufficiently to cover the said advance in rates or any part thereof."

The carriers answered these complaints with averments substantially denying the allegations therein, asserting the changes in conditions and the reasonableness of the advanced rates.

The evidence offered by the complainants consisted:

(1) of witnesses engaged in the lumber industry, who testified to cost and selling prices, conditions of manufacture, competitive conditions and markets reached, condition of the industry and causes thereof, their reliance on a continuance of the previous rates, belief in their right to them and need of the industry for a continuance of them;

(2) one witness, having some experience in rate matters, who produced numerous exhibits containing statistical rate comparisons, etc.;

(3) statistical evidence, from railroad reports to Commission and stockholders relating to revenues and expenses, interest and dividends, character and tonnage of traffic and generally speaking, a large amount of such data relating to the entire operations of these carriers.

Before proceeding further, it will be of assistance to briefly recite from the record the essential facts relating to the history of the rates and the growth of the traffic thereunder.

FACTS RELATING TO THE RATES AND TRAFFIC.

Prior to November 1st, 1907 the following were the rates in effect from coast points to the larger destinations in the middle west:

	Cents per 100 pounds.
Coast to St. Paul,	.40
Coast to Omaha,	.50
Coast to Chicago,	.50
Coast to Denver,	.40
Coast to St. Louis,	52½

By the tariff of November 1st, 1907, these rates were advanced as follows:

Coast to St. Paul,	.50
Coast to Omaha,	.55
Coast to Chicago,	.60
Coast to Denver,	.50
Coast to St. Louis,	.60

Prior to November 1st, 1907, rates from the Spokane district were as follows:

Spokane to St. Paul,	.40
Spokane to Omaha,	.45
Spokane to Chicago,	.50
Spokane to Denver,	.40
Spokane to St. Louis,	.52½

On November 1st, 1907, the rates from Spokane were published to be effective as follows:

Spokane to St. Paul,	.45
Spokane to Omaha,	.50
Spokane to Chicago,	.55
Spokane to Denver,	.45
Spokane to St. Louis,	.55

East of the Spokane territory is a third district known in the tariffs as the Montana-Oregon territory, including as typical points Kalispell on the Great Northern, Hamilton on the Northern Pacific and Boise on the Oregon Shore Line. From this district the rates prior to November 1st, 1907, were as follows:

Montana-Oregon points to St. Paul,	.40
Montana-Oregon points to Omaha,	.40
Montana-Oregon points to Chicago,	.50
Montana-Oregon points to Denver,	.35
Montana-Oregon points to St. Louis,	.49½

By the tariffs of November 1st, 1907, the following rates were proposed:

Montana-Oregon rate points to St. Paul,	.43
Montana-Oregon rate points to Omaha,	.43
Montana-Oregon rate points to Chicago,	.53
Montana-Oregon rate points to Denver,	.40
Montana-Oregon rate points to St. Louis,	.52½

In connection with these rates it is important to note that the Cascade Mountains running north

and south through the States of Oregon and Washington form a natural division of the states into two main parts. West of the summit of the Cascade Mountains down to the shore of the ocean there is a large district which is heavily timbered, covered with trees of large and magnificent proporions. This district extends from the International boundary, so far as the United States is concerned, southward; and constitutes what in the tariffs is known as the Coast Rate Territory. As will appear later, the carriers have applied to eastern destinations the same rates from all points west of the summit of the Cascade Mountains, and from the International Boundary on the north to Medford, 359 miles south of Portland, on the Southern Pacific Lines. Prior to November 1st, 1907, the rates from this entire territory, Portland and north, on fir lumber was 40 cents to St. Paul and 50 cents to Omaha and Chicago.

The eastern slope of the Cascade Mountains is also timbered but the trees are not of the same magnificent character as are found on the western slope. This eastern slope, at times, carried a slightly lower basis of rates to eastern destinations but for the purposes of this brief, it will not be necessary to further refer to it.

East of the base of the Cascade Mountains is an open farming country three or four hundred miles in extent. Approaching Spokane, the west slope of the Rocky Mountains is encountered and

timber again appears. There has always been a rate basis from Spokane to eastern destinations, and rates from Spokane have to some destinations been less than those from the coast. East of Spokane, using the Great Northern Line as an illustration, Kalispell, White Fish, Columbia Falls, etc., are lumber producing points, but are in the Montana-Oregon rate territory and carry slightly lower rates than those obtaining from Spokane.

In 1893 and prior thereto the rate on fir lumber to Omaha was 55 cents; to St. Paul it was 55 cents; to St. Louis it was 57½ cents; to Chicago it was 60 cents. There were at different times variations in the way of reductions or advances in these rates prior to 1893 but as noted by the Commission in its opinion in the Washington case (No. 452):

> "These fluctuations do not appear to have been coincident with nor dependent upon any fluctuation in the volume of the traffic, but would seem to be due to the exigencies of the carriers in competing for and making rates to secure the business."
>
> See Tables of Rates at different times, in decision of Commission in Washington case, pp. 48-52, Vol. A, No. 452, I. C. C. v. Northern Pacific Ry. Co., et al.

The only important point to be noticed here is that *prior to 1893 the rates to St. Paul and the Missouri River were the same and were uniformly upon a higher basis than those established in 1893.*

In that year the Great Northern Road was completed to the coast. That fact led to a reduction in rates.

At that time the production of lumber in Minnesota, Wisconsin and Michigan was at a high tide, the testimony in the case showing that the output of white pine lumber was fully sufficient to supply all of the middle western country. It was testified by one witness that the City of St. Louis, which today, is almost at the gateway of the southern yellow pine district, was built of white pine from the north. Other witnesses testified that the movement of white pine logs and lumber by the lakes and the Mississippi River built up large sawmilling industries as far south as Hannibal and St. Louis, Missouri. There was such an abundance of the white pine output that it supplied the requirements of the States of Iowa, Missouri, Kansas, Nebraska and Illinois and certain of the eastern states. It was the chief and almost the only lumber at and prior to that time that was used in the building up of this middle western country.

In order to understand the conditions bearing upon the rates from the coast in 1893, *it is necessary to understand the character of the rates applying then on white pine and also, as time went on, upon yellow pine from the south.*

Rates on white pine in Minnesota, Wisconsin and Michigan had always been affected by and been made to meet the competition of vessels upon the

Great Lakes and the Mississippi and other inland rivers. The vessels had always brought white pine either in the rough or in the finished state from Duluth and oher lake ports down to Chicago. Rates upon vessels of this kind had always been low because the cost of this kind of transportation is always relatively low, and these rates added to the rail rates into Illinois, Iowa, Missouri and surrounding states brought about a very low basis of rates upon this product. White pine logs had for years been floated down the Mississippi River and its tributaries in large volume for manufacture at cities on the river. This form of transportation of the log is the least expensive of all, and as a result the transportation cost upon the finished lumber into the interior of the adjoining states had always been upon a very low basis. (Testimony of C. I. Millard, Vol. 4 Transcript p. 1333.) All-rail carriers leading from the white pine forests or the lumber mills north of the Twin Cities have had to meet rates thus constructed; and as a result the testimony fairly shows that all of the rates, all-rail from northern manufacturing points to these central states, which are the chief concern in this litigation, were directly affected by water competition

At or about the same time the yellow pine industry began to creep north. The development of the movement of grain to the gulf ports over roads like the Illinois Central produced a growing southbound tonnage and it became important to the man-

agers of those roads to find north-bound tonnage to fill empty cars on their return trip.

It is significant to note in the case of *Texas & Pacific Railway* v. *The Interstate Commerce Commission*, known as the Import case, 162 U. S., 197, that even prior to 1893 the need for north-bound tonnage was felt by the lines leading to the gulf. This case arose out of an order of the Interstate Commerce Commission relating to import rates through the port of New Orleans and the subsequent proceedings in court relating to the effort of the Interstate Commerce Commission to enforce that order. The merits of that case are of no importance here, but it is important in this connection to note that this Court commented upon the answer of the Texas & Pacific Railroad Company, justifying the maintenance of import rates at a lower scale than those fixed for domestic business. The Court said page 206:

> "These allegations of the answer were not traversed or denied by the Commission, but are confirmed by the findings of the Commission attached as an exhibit to the petition in the case; and by said findings it further appears that the proportion the Texas & Pacific Railway receives of the through rate is remunerative—that the preponderance of its empty cars go north during eight months of the year, and if something can be obtained to load, it is that much found, and anything is regarded as remunerative than can be obtained to put in its cars to pay mileage," etc.

This case was decided by the Supreme Court in 1896 and the order of the Interstate Commerce Commission upon which it was based was made in January, 1891.

From this it appears that at that time the lines from the gulf ports were seeking to build up northbound traffic to balance their empty car movement, and that case had to do with their efforts to encourage and create as large an import business through the gulf ports as possible.

The building up of the yellow pine industry was another effort on the part of these same lines to find loads for cars made empty at the gulf ports. Southern yellow pine offered business in enormous quantities in the south and having empty cars moving north, the carriers in that part of the country were able to make very low rates in order to develop this movement. Many of those lines have low grades and their operating cost is correspondingly less than that of lines leading from the Pacific Northwest.

In Burgess v. Transcontinental Freight Bureau et al., 13 I. C. C. p. 678, the Commission said: "The line of the Illinois Central between Memphis and New Orleans is practically a water grade, and freight can be moved at an extremely low cost. The general level of rates upon the line of that railroad is far below that upon the transcontinental lines involved in this proceeding."

But in order to bring the yellow pine north, it not only required a low rate to meet the water competitive rate already in effect on white pine from the north, but there was a prejudice against yellow pine from the long-continued use of white pine; and therefore, in order to establish the yellow pine industry in the markets already occupied by white pine, there was a further reason for low rates so that the product could be introduced and sold. Thus under these conditions in 1893, the middle western country on both sides of the Mississippi River was the scene of sharp competition, in growing amount as the yellow pine came north in large volume.

Testimony of C. I. Millard, Vol. 4 Transcript pp. 1331-1341.

J. A. Munroe, Vol. 1 Transcript pp. 303-310.

J. G. Woodworth, Vol. 1 Transcript pp. 376-380.

A third condition also is to be borne in mind and that was that in 1893 the country was in the throes of a financial panic and prices were at a very low ebb. It was several years after 1893, as is well known, before the country began to recover from the effect of this panic; and there was a period of several years during which prices of lumber as well as other kinds of material, and also prices of labor, were, compared to what they have since been, upon a very low scale.

At this time, as above stated, the prevailing rate on western lumber to Omaha and to St. Paul was 55 cents. It is doubtful whether there was much if any lumber moved at that rate, largely because of the abundance of the supply in the north and the south, and also because of the low prices then obtaining. Furthermore, fir lumber was an unknown quantity in the eastern market and there was a prejudice against it.

Upon the completion of the Great Northern road to the coast the obvious need was eastbound tonnage. At that time the preponderance of the traffic was westbound; the manufacturers in the east were shipping their products to the west for the building up of the country, and the people in the west had little if anything to ship east. The testimony shows that after the Great Northern reached the coast for some years the great majority of the cars returned east empty. While there was and had been for many years lumber manufactured on the coast, it was used or disposed of locally or shipped by water to California and other points accessible from coast ports, or else to foreign ports. There was apparently no eastern shipment of importance. Canned salmon was about the only product which offered loads for eastern shipment and, as testified to, there was very little of that. The abundance of timber and the opportunity thus afforded for the manufacture and eastern shipment of lumber offered the only prospect of eastbound load-

ing *and in order to encourage this movement the Great Northern road reduced the rate then in force to St. Paul to 40 cents; the rate to Chicago was made 50 cents;* the addition of ten cents thus made to the St. Paul rate being all that the roads between St. Paul and Chicago could obtain on account of the proximity of Lake Michigan and the influence of the lumber industry in white pine on the Mississippi River.

The Union Pacific interests refused to meet the reduction thus made at St. Paul, although the distance to Omaha is, ordinarily speaking, less from coast points of origin than to St. Paul. The Union Pacific interests always felt that the 40 cent rate to St. Paul was unreasonably low and they declined to make the corresponding reduction to Omaha, but fixed the Omaha rate at 50 cents. The Northern Pacific was compelled to meet the 40 cent rate at St. Paul. As the Chicago rate was made 50 cents via St. Paul, it was obvious that the Union Pacific lines could haul no lumber to Chicago unless they made the 50 cent rate there, *so the Omaha rate was forced by competition through to Chicago and thereby the 50 cent rate was established at all of the intermediate territory as a maximum.* This was a reduction also of ten cents, to Chicago, caused by the reduction in the St. Paul rate.

Under the conditions then existing, with empty cars moving eastward in considerable volume, the lumber business thus opened up, constituted what

has been recognized as and has been frequently called "surplus business." The decisions of the courts and the Commission have justified the making of very low rates on business of this character in order to obtain loads for empty cars. As has been held in different cases, anything which added to the income of the road and provided some revenue to pay the difference between the hauling of an empty and a loaded car was that much of an advantage; but it is important to remember that this was not the sole condition governing the making of this rate. All costs of operation of the railroad at that time were much lower than in later years, and as above stated, the abundance of lumber from the northern and southern districts, and the low scale of prices then being obtained, created a condition whereby it was necessary for a very low rate to be applied to this new and untried product which was being introduced in competition with the better known white pine, and the growing consumption of yellow pine.

It was some years after 1893 before there was any notable advance in the movement of lumber from the coast. The proof shows that it was not until 1900 and thereafter that the business grew to any marked extent; but at or about that time conditions began to change, prices began to advance and the country began to rapidly grow. There was a period following 1900 when there appeared to be hope of a large increase in the export trade through the Pa-

cific ports with the Orient, and the hope was felt by the railroad authorities that tonnage would be supplied in this way to make westbound loads. Every effort possible was put forth to develop the export trade, but for reasons not now necessary to mention, those efforts largely failed and that source of tonnage has materially fallen off.

With the coming of 1905 and 1906 a marked and tremendous change in conditions appeared. The railroad cost had enormously advanced; wages had increased from 20 to 40 per cent., embracing every class of railroad labor; taxes increased nearly 50 per cent., and lumber of all kinds for railroad work advanced approximately 120 per cent. The shipment eastward of Pacific Coast lumber grew to tremendous proportions and the immediate consequence was that the empty car haul, particularly of the northern lines, was completely reversed.

The shipment eastward of other forms of traffic has had little to do with the change in the empty car movement; and it may be stated here that the remarks of the Commission in its opinions in the coast cases on that subject, are not borne out by the exhibits in evidence and the testimony of the witnesses who are familiar with the facts. It is sufficient here to note that the great, and in fact the only noticeable form of eastbound traffic that moves in considerable volume on the northern lines is, and for several years has been lumber and forest products of different kinds. *The westbound traffic,*

as the figures show, furnishes all of the empty cars necessary on the coast for the shipment eastward of all of the traffic offered on the coast except lumber, and lumber is the one form of traffic which can be pointed to as having caused the tremendous movement of empty cars westward on those lines.

Careful examination of this movement was made before these cases were tried and the exhibits show without question, and in fact *the finding of the Commission establishes it as a fact,* that the empty car movement is westbound in large volume; whereas, it is also a fact and *so found by the Commission,* that in 1893 when the reduction in this rate was made, the contrary was true and the movement of empty cars was altogether to the east.

The record contains a full statement of the effect of this lumber tonnage upon the expenditures out of capital by these lines in their efforts to take care of it. Line changes, lengthening of side tracks, passing tracks, reducing grades, boring of tunnels, the purchase of larger equipment, cars and locomotives, are among the different expenses which have been largely caused by this tremendous volume of lumber movement. The record shows that during 1906 and the first half of 1907, and in fact prior to that time, car shortages of acute character existed, and at times the northern lines were almost completely broken down with the excess of lumber traffic. The construction of the Spokane, Portland & Seattle road down the north bank of the

Columbia River was one of the larger expenditures made necessary chiefly by the growth of this business; and it stands without successful contradiction that largely because of the lumber traffic these roads have been overloaded and their capacity overtaxed, and as a result their cost of operation has greatly increased.

In the Oregon Case, No. 1327, the Commission said:

> "The density of traffic on the defendant lines has increased to such an extent that it is more than can be advantageously handled on single-track roads."

The foregoing in outline states the facts and the reasons whereby, because of this change in conditions and increase in cost, these lines concluded that it was no longer possible to continue the low scale of rates established in 1893. It had become apparent not only that the 40-cent rate was not paying for the cost of the business, but also that as long as it remained in effect it constituted a discrimination against other forms of traffic and that the lumber industry was obtaining its transportation without paying its fair share of the cost of operation.

The commission after hearing the cases, by a divided vote, authorized a portion of the increase demanded. Two of the Commissioners held that the entire advance was justified.

The Commission in the Washington case said (after defining the Pembina-Port Arthur line):

> "To certain points further east involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton per mile accruing to the carriers from this traffic."

The Commission in the Oregon case, said:

> "The rates from said points of origin to points east of the line above-mentioned might reasonably be somewhat increased,"

and the increase of five cents referred to was authorized.

THE DISSENTING OPINIONS.

(Vol. A. No. 451 p. 62.)

The Chairman of the Commission, Mr. Knapp, together with Commissioner Harlan, dissented, and their dissenting opinion may now be referred to as containing their opinion that:

> "All the circumstances indicate to my mind that these rates when established were regarded by the carriers and by the shippers as well, as uncommonly if not abnormally low and that both parties apparently anticipated that at a later date they would be advanced. I cannot but believe that conditions have so changed since these rates were established as to justify the carriers in refusing to continue them in force."

And again:

> "I am therefore of the opinion that these conceded and significant changes in conditions warranted the defendants in increasing rates which were understood to be on a very low scale, when lumber was worth little more

than two-thirds its present value and when railway service was much more cheaply performed."

And finally:

"Taking into account all the transportation conditions, including the haul over two mountain ranges and over a long stretch of territory which furnishes little traffic, I am of the opinion that even the advanced rates are among the lowest on which any considerable volume of lumber is anywhere moved. They are the lowest rates, all things considered, which the defendants charge on that commodity; and relatively low in comparison with their rates on other traffic. The old rates may fairly be regarded as unreasonably low, even if they did not discriminate against other traffic, and I think the defendants were justified in applying a higher scale of charges."

Believing that the dissenting opinion expressed the only just result of the evidence, and that the majority opinion erred in refusing to permit the advance in rates as published in the tariffs of November 1, 1907, these bills of complaint were brought to enjon and set aside these orders.

Light may also be obtained for a correct understanding of the majority opinions, by a brief consideration of the reasons which led to these dissents.

Chairman Knapp said:

"A careful examination of the record shows that the contention of the complainants rests mainly, if not altogether, upon two propositions: (1) that the rates which were ad-

> vanced on November 1, 1907, had been voluntarily accorded for a considerable period of years and must therefore be regarded as reasonable; (2) that the earnings of the defendant carriers upon their entire business are so great as to afford ample revenue without advancing the rates in question."

We have here an instructive statement of the fair substance of the record before the Commission and of the grounds that led to the majority conclusion.

The dissenting Commissioners analyzed the record bearing upon these two grounds of the decision and pointed out,

> (1) that the explanation offered by the carriers for these advances in rates had been furnished and the reasons given were sufficient, whereby the presumption had been overcome; that it was clear that the old rates of 1893 presented an exceptional instance of very low rates because of peculiar conditions and that the change in conditions justified the carriers in refusing to continue them in force; and,
>
> (2) while it appeared to be true that large earnings from all business during recent years had been made by these carriers, permitting a substantial surplus therefrom, it was entirely clear that little, if any, of this surplus resulted from the transportation of lumber to the territory affected by the advance in rates, and they were unwilling to concede in view of all of the circumstances that the unreasonableness of the advanced rates could be inferred from the showing that the aggregate earnings from all traffic could be reduced without apparent injustice.

Further reference will later be made to this dissenting opinion, but it is of value here in determining the issues that were really determined by the Commission.

THE MAJORITY OPINIONS.

An examination of the majority opinion in each of the cases shows that the grounds thereof as pointed out by Commissioners Knapp and Harlan in their dissent, were among the main considerations to which the Commission addressed itself, but it is also plain that the Commission went further and fixed these rates mainly and with almost the single purpose, of determining what markets this lumber should reach, and what competition it should be enabled to meet.

The Oregon opinion recited numerous facts relating to the increase in the lumber industry and the extraordinary prosperity which it had enjoyed in the past few years; the advancing range of prices that the record showed, as well as the increase in the cost of manufacture and the average profits therefrom; the competitive area in which the Pacific Coast lumber competed with the yellow pine and white pine, and said:

> "A certain portion of the lumber manufactured on the North Pacific Coast can compete successfully with other lumber in any markets. They there produce certain dimensions and qualities that are produced to but a limited extent, if at all, elsewhere. These qualities

are the choice portions of the logs and necessarily in producing them a large quantity of common lumber is also produced or a great waste of material occurs. The widest possible market for their medium and common lumber is what the North Pacific coast lumber men need most and every market that can reasonably be opened to their common lumber operates to lessen the waste and destruction in the natural supply. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates. The combined North Pacific coast interests market about 5,000,000,000 feet annually, as against approximately 19,000,000,000 feet of southern pine and white pine, which shows that the latter two predominate and fix the price in competitive markets. It is alleged by yellow-pine dealers that an advance of 5 to 10 cents per 100 pounds in their freight rates would drive them out of competitive territory.

"It is insisted by the defendants that the advance in the rates will not affect the entire output of the North Pacific coast, because at least 50 per cent of that output does not reach the affected territory. But it is clear that Pacific coast lumber sold in that territory must be the surplus that can not be advantageously sold in the nearby markets, and if that surplus is thrown into the nearby markets a lowering of prices would inevitably flow from the elementary economic law of supply and demand."

The opinion referred to a large amount of testimony and statistical information relating to the total operations of these carriers and their financial condition and held:

> "From this it appears that the schedule of rates applying to each defendant line as a whole furnishes sufficient revenue."

Again, the opinion after adverting to the presumption attaching to the long existence of a rate and the decision of this court in Interstate Commerce Commission against Chicago Great Western Railway Company, 209 U. S. 108, that an increase of rates by a carrier raises no presumption of wrong, states the contentions, as the Commission viewed them, as follows:

> "Under this presumption complainants contend that the old rates were reasonable and remunerative; that under them many mills have been built and large amounts of money have been invested which under the new rates will be lost because the mills can not find an outlet for their product in the territory affected by the advance in the rates; that the consumers in the affected territory are likewise interested; that the carriers should grant rates that will permit the widest possible competition in commodities; that the carriers' total incomes from their entire schedule of rates are sufficiently remunerative and profitable, and such being the case the carriers are estopped from increasing a rate on any commodity that will increase the income; that if the total income is sufficient they are not permitted to increase the rate on a given commodity that may be lower than the cost of transportation. To this last proposition we, of course, can not assent.
>
> "While denying an intent to claim that a rate on a commodity may be based upon the

profitable nature of an industry producing it, yet defendants indirectly advance that theory. They also insist that every commodity should bear its just burden of rates and that lumber did not bear its just proportion and that therefore the rates thereon should have been increased. If this is true, some other commodity is bearing too high a rate, but defendants have not suggested which one. They also insist that the changed conditions since the low rates were inaugurated required the advance Neither of the parties are right in all their contentions.

"The railroad rates from various points of production will determine so far as transportation is concerned the limit or the extent of the consuming territory which any given commodity can reach. In competition with others and in their desire for business, carriers may move a commodity as far as a remunerative rate will permit—that is, if the compensation is something above the actual cost of the service, and it may be doubted whether carriers can go to this extent if the equipment so used is thereby diverted from the demands of other traffic offered to the carrier. Points producing the same commodity may be widely separated and be served by different carriers. It is manifest that the rates of the different carriers serving the different points will likewise determine the limits of the common competitive territory of the commodities from such points of production. Competitive rates made by the several carriers serving the different points of production may be lower than they could be compelled to make. The law permits the making of a competitive rate to the extent above mentioned, but there is no law that requires the carriers to go to that extent. This controversy can not be determined wholly

> upon the ground that complainants have enjoyed the lower rate for many years and that interests have been built up thereunder and that loss of business, investments, profits, and markets will result under the increased rates. It must be determined on the justness or reasonableness of the rates in controversy. Neither do the interests of the public require that lumber should be transported at other that just and reasonable rates."

It may here be stated, that if the opinion as a whole taken in connection with the record made before the Commission, contains substantial evidence that the controversy was in fact determined "on the justness or reasonableness of the rates in controversy," this court will not weigh the facts to determine whether it would have reached the same conclusion. In that event the orders are not subject to injunction upon the ground that they were made in the exercise of a power of determining a proper policy for the carriers, or the competitive markets to which common lumber should be permitted to move in competition with other sources of supply.

In the Washington opinion the following language appears (Vol. A, 452, page 57):

> "The rates in effect prior to the advances complained of had been in force for long periods of time and in a few instances the carriers had voluntarily maintained rates lower than those in effect immediately prior to these advances. The lumber trade had adjusted itself to the conditions obtaining un-

> der those rates, so that the vast interests affected were in a large measure dependent upon the continuance thereof. The defendants derive a large proportion of their revenues from the lumber traffic, and it clearly appears that they have not only earned large profits on their general business, but that the transportation of lumber under the old rates yielded a commensurate part thereof, and a reasonable return for the service performed."

It will require an examination of the record to justly determine the controlling reasons for the decisions.

ISSUES IN THE CIRCUIT COURT.

From the allegations in the bills and answers of the defendants, above recited, the issues in the court below seem to have been:

> (a) That the orders of the Commission were beyond its power because not based upon any proof that the advanced rates were unreasonable, but made for reasons other than those within their power and bearing upon the reasonableness of the rates for the services rendered.
>
> (b) Because, on the record made in the lower court, the advanced rates were in no wise unjust or unreasonable, and there was therefore a total want of power in the Commission, under Section 15 of the Amended Act to Regulate Commerce, to adjudge those rates unreasonable, and in lieu thereof, prescribe other and lower rates.

It should be stated here with frankness that these bills of complaint were filed before the announcement of the decision by this Court, on January 10th, 1910, in the case of Interstate Commerce Commission against Illinois Central Railroad Company, 215 U. S. 452, but the argument before the Master was made in the light of that decision, and it furnished the rule that was followed by the Master and the Circuit Court throughout the further conduct of the litigation. It will be seen that in view of the allegations in the bill and proof in support thereof, both the Master and the lower Court held that the action of the Commission in condemning the advance in rates to points east of the Pembina-Port Arthur line, was beyond its power or so unjust and unreasonable as to be beyond the substance, if not beyond the form of its power. In so far as the allegations in the bill tendered the issue in the lower court that the advanced rates were fair, just and reasonable as a matter of fact, to be tried independently by the court, the decision in the Illinois Central case put that matter at rest, and the case was determined by an inquiry into the record to determine whether the orders of the Commission were in substance within its power.

THE RECORD IN THE LOWER COURT.

The entire record made before the Commission was offered in evidence before the Master, and by stipulations entered into, a complete printed abridgment of that record has been agreed to and

is now before the court. It is contained in Volumes 3 and 4, pages 913 to 1623, of the Transcript in this Court.

In addition to the record before the Commission some additional evidence was offered before the Master. (Transcript Vol. 1 and 2.)

In the answer filed by the defendant Commission it is charged that these carriers have been enjoying ample and "munificent" returns.

In the light of the expressions contained in the dissenting opinion, that one of the controlling reasons for the action of the Commission was the contention of complainants before it, that earnings from all business had been sufficient without advancing these rates, this averment in the answer seemed to render it proper to show the facts in that regard.

The issue had been tendered before the Commission and was again tendered by it in the court below.

It was met by the carriers by the introduction of evidence establishing the value of their properties. This consisted of a full showing of the present cost of reproduction of the Northern Pacific and Great Northern systems; also of a showing of the value of those systems, derived from computations based upon market prices of stocks and bonds for a representative period, together with statements of financial facts and statistics relating to their incomes and expenses. (Vols. 1 and 2, Trans.)

In the determination of the reasonableness of a rate upon a single item of traffic, evidence of this character has been held to be remote and the master in his conclusions expressed that opinion; but the issue tendered by the answer of the Commission made this evidence pertinent.

It was offered to support the proposition that these companies have not in recent years been earning a fair return upon the present value of the properties and, therefore, have a legal right to advance a rate of this character already below a reasonable basis to more nearly a compensatory figure. This is particularly true in the face of heavy reductions in other rates that are now being made by State and Federal authorities, such for instance, as the sweeping reductions being made in the Spokane case (see recent opinions in that case, filed June 7, 1910, 19 I. C. C. 162, and June 22, 1911, 21 I. C. C. 400), reductions in class rates from Pacific Coast terminals eastbound, in Portland Chamber of Commerce against O. R. & N. *et al.* and Transportation Bureau of Seattle Chamber of Commerce against Northern Pacific Railway Company *et al.*, 19 I. C. C. 265; Commercial Club Traffic Bureau of Salt Lake City, Utah, against A. T. & S. F. *et al.*, 19 I. C. C. 219, 21 I. C. C. 400, freight and passenger rate reductions in the State of Minnesota, now pending in this Court (Simpson v. Shepard, Kennedy, *et al.*, Nos. 599, 560, October Term, 1911), and other similar reductions in other states through which the lines of these companies pass.

In addition to this character of proof there was additional evidence produced from traffic witnesses throwing further light upon the circumstances relating to these rates and the conditions under which they were originally made and have since been maintained.

This additional evidence is contained in the testimony of J. A. Munroe, Freight Traffic Manager of the Union Pacific R. R. Co., and J. G. Woodworth, Traffic Manager of the Northern Pacific Railway Company (Vol. 1, Transcript, pp. 299-424.)

THE MASTER'S REPORT

The Master devoted a considerable portion of his report to a discussion of questions of law relating to the power of the Commission and the scope of the power of the Courts in reviewing orders made by it. These portions of the report need not here be considered. His findings of fact are found in Vol. A, No. 451, pp. 80-92. He adverted to the decision of this Court in Interstate Commerce Commission v. Illinois Central Railroad Company, 215 U. S. 452, and applying the rule therein, stated his conclusions of fact from his findings, on pages 104 to 114.

Laying aside his discussion of legal questions, we state the essential results of his conclusions of fact (pp. 105 et seq):

(a) The defendant in drawing the Pembina line, dealt with the case in a double aspect and the Master properly held that the same course was open to the Court.

(b) He adopted the rule in Interstate Commerce Commission v. Illinois Central Railroad Co., 215 U. S. 452, as the basis upon which to proceed.

(c) He held that if it were the function of the Court to fix reasonable rates, it would be difficult to escape the conclusion that the rates ordered to the Pembina line were unreasonably low but under the guidance of the rule stated, held that the evidence was not so clear and conclusive as to justify a recommendation for an injunction against that portion of the orders.

(d) In ordering the rates restored to points on and west of the Pembina line, the Commission was presumed to have acted under its power of determining reasonable rates, and therefore, in ordering the 50 cent rate restored to Omaha for a typical distance of 1799 miles, it must be conclusively presumed that it determined 50 cents to be just and reasonable for that service.

(e) This conclusion furnished a valuable measure for testing its action upon rates to points east of that line, as for instance, St. Paul.

(f) He found that conditions affecting the haul of lumber to St. Paul were substantially similar to the haul to Omaha excepting that the haul, on the average, was longer to St. Paul.

(g) He examined the distances from various coast points to St. Paul and to Omaha and computed the earnings per ton mile and found that, in every instance, the distance to St. Paul was greater and the earnings per ton mile were less.

(h) He weighed all the circumstances in detail and found no reason in the record justifying the order requiring the carriers to accept 45 cents to St. Paul, while expressly holding 50 cents to be reasonable to Omaha.

(i) Under the express reason given by the Commission for permitting the advance of 5 cents, i. e. the longer haul and the lesser revenue per ton mile, he found its order, requiring the rate to St. Paul to be limited to 45 cents, to be conclusively unjust, unreasonable and arbitrary.

(j) By a like process of reasoning, he found that the action of the Commission, in condemning the rate of 60 cents to Chicago, was also arbitrary and unjust, and recommended an injunction against that portion of the orders affecting rates to points east of the Pembina line.

(k) Finally he concluded and so found, that as the rates on other kinds of lumber and forest products have a fixed relation to those on fir, and as the differentials in rates from the Spokane and Montana-Oregon territory have a fixed relation to those from Coast territory, there should also be an injunction issued, an-

nulling corresponding portions of the orders affecting rates on other forest products and differential rates from the other districts, to points east of the Pembina-Port Arthur line.

THE OPINION OF THE LOWER COURT.

After full hearing of exceptions by both parties (Vol. A, No. 451, pp. 120-142: 145-6) the lower court (composed of Circuit Judges Sanborn, Van Devanter and Hook) overruled all exceptions and filed the following opinion (Vol. A, p. 147-8), omitting caption of cases:

> "All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty-cent rate on lumber to St. Paul and other points east of the Pembina line was arbitrary, so palpably unjust and unreasonable, and so discriminatory that it was beyond the power of the commission are overruled on the ground that this action of the commission was beyond its power or so palpably and gravely unjust and unreasonable as to be beyond the substance, if not beyond the form, of its power and upon the authority of
>
> Interstate Commerce Com. vs. Ill. Cent. R. R. Co. (30 Sup. Ct. Rep., 155); C. M. & St. P. Ry. Co. v. Minnesota (134 U. S. 418-452-456-457); Mo., Kansas Texas R. R. Co. et al vs. I. C. C. (164 Fed., 645); F. H. Peavy & Co. vs. U. P. Ry. Co. (176 Fed., 409-418-422).
>
> Let orders, therefore, be entered overruling the exceptions to the special master's report and let the proposed decrees be entered."

The following decree was thereupon entered in each of the cases (omitting captions, Vol. A, p. 150):

"This cause came on to be heard at this term and was argued by counsel; thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

"That the order of the defendant in the proceedings brought before it entitled Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al., being I. C. C. No. 1327, dated June 3, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in the proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association et. al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 28, 1908, and as further amended September 1, 1908; and the order of the defendant in the proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in the proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific Railway Company et. al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, in so far as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line

drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota, Moorhead and Breckenridge, Minnesota, Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Missouri, and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line."

BRIEF.

The Court below, following the recommendation of the Master, declined to disturb the orders of the Commission restoring the rates to points on and west of the Pembina line. The Master concluded (Vol. A, No. 451, p. 107) that while "it cannot be denied that there was substantial evidence that the rates in question to Missouri river points are at least upon a low basis upon the traffic in question in these cases," the evidence on that branch of the cases was not so clear and conclusive, under the rule laid down by this court in Interstate Commerce Commission against the Illinois Central Railway Company, 215 U. S. 453, as to justify a recommendation that an injunction issue against that portion of the orders.

Upon these appeals, therefore, it follows that the action of the Commission, in determining the rates to points on the Pembina line and west

thereof, was within its power and was taken in the exercise of its power of determining reasonable rates for the transportation of lumber to those points. As no cross-appeal was taken by the carriers, the question upon these appeals, as we view it, relates to the character of the power exercised in fixing the rates to points *east* of the Pembina line.

The Commission declined to permit the advance claimed by the carriers, to these long haul points east of the Pembina line. It recognized a right to some increase and approved an advance not to exceed 5 cents per cwt. The reason given was because of the longer hauls involving less revenue per ton per mile.

Having permitted a portion of the advance claimed, the questions upon this appeal are narrowed to the inquiry, whether the court below erred upon the record in holding that, in so restricting the advance, the action of the Commission was "beyond its power or so palpably and gravely unjust and unreasonable as to be beyond the substance, if not beyond the form, of its power?"

PROPOSITIONS.

We approach the discussion of this question by asserting two propositions:

> (1) By the measure of reasonableness *contained in the Commission's orders* restoring rates to points on and west of the Pembina line

and thereby establishing those rates as reasonable, the rates fixed by it to points east of that line, are conclusively unjust and unreasonable.

(2) The record made before the Commission did not warrant or justify its action in declaring the rates of November 1st, 1907, to points east of the Pembina line to be unreasonable. This follows for these reasons:

(a) The record before the Commission and its opinions, show that the cases were determined upon the Commission's views as to the broad policy that should be adopted in finding a market in eastern states for coast lumber, particularly common grades, and not under its power to fix rates for the particular service rendered. The Complaints show that the issues mainly tendered were those of equitable estoppel and policy, necessary or wise for the welfare of the industry. The evidence produced by Complainants before the Commission followed these lines.

(b) The carriers gave "a good reason" for the change in these rates (I. C. C. v. C. G. W. Ry. Co., 209 U. S. 108). If a presumption of reasonableness arises from the long existence of particular rates, it yields to the force of conclusive evidence to the contrary.

(c) The total earnings—gross or net—from all business of these carriers, or stated differently, the fact whether they were prosperous or the reverse, were facts having no practical bearing on the reasonableness of a rate on a single article of traffic.

ARGUMENT.

A.

The rates established by the Commission to points on and west of the Pembina line must be accepted on these appeals as just and reasonable. Omaha was apparently taken by the Commission as a representative point on this line.

In the Oregon case the Commission said (Vol. A, No. 451, p. 61):

> "It will be noticed that the old rate on fir lumber from Portland to the Missouri River was 50 cents per 100 pounds, and the short line mileage is 1,799 miles, or approximately 130 miles less than the short-line mileage from Seattle to St. Paul, and it is urged that the rate from Portland to Omaha should not exceed the rate from Portland to St. Paul. However, this 50-cent rate to the Missouri River, and also extending to Chicago, applied not only from Portland but from points on the Southern Pacific lines south of Portland as far as Medford, 359 miles, and while it may be that lumber produced that far south of Portland would naturally move southward, at the same time the rate was open from Medford. The record shows that at least as far as Cottage Grove, 150 miles from Portland, lumber moves via the Southern Pacific into Portland and east over the lines of the Navigation Company."

The rate fixed therefore from Portland to Omaha as reasonable for the transportation service of 1,799 miles was 50 cents per 100 pounds.

To points further east "involving *longer hauls*" higher rates were authorized "in view of the less revenue per ton per mile accruing to the carriers from this traffic."

But the haul from Coast points *to St. Paul is longer and the revenue per ton per mile is less.*

Nevertheless, the Commission permitted a rate not to exceed 45 cents per 100 pounds at St. Paul.

If 50 cents is reasonable for 1,799 miles to Omaha, 45 cents for the much longer haul to St. Paul is conclusively unjust and unreasonable.

In pursuing the consideration of this question we shall not limit the comparison to short-line distances but follow the course adopted by the Master and take an average of conditions. This is fair and in consonance with the remarks of the Commission regarding group systems of rates such as these are.

We quote the finding of the Master (Vol. A, No. 451, p. 108) in lieu of re-stating the facts:

> "In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis and Duluth from a variety of shipping

points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distance may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1896 miles; from Portland to St. Paul, via this line, it is 2052 miles, and as an illustration of longer hauls to St. Paul via this line, the distance from Astoria to St. Paul is 2072 miles. Substantially similar results are obtained upon the Great Northern lines.

"It is therefore not unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded."

The Master computed the earnings per ton mile upon this traffic from representative shipping points to Omaha and Kansas City on the one hand and St. Paul and Minneapolis on the other. These computations are based upon distances and rates contained in the exhibits. Certain of them are stated at the foot of the map at the front of this brief, which was one of the Complainant's exhibits before the Commission.

The Master held (p. 106):

"The short line distance from Portland to Omaha is stated by the Commission in its decision in the so-called Oregon case (No. 1327) to be 1799 miles. From the exhibits offered before the Commission it appears that this is substantially correct, and that the 50-cent rate restored by the orders of the Commission results in revenue of 5.56 mills per ton mile. To

Kansas City, another Missouri River point to which the same 50-cent rate applies, the distance appear to be 2030 miles, with a resulting ton mile earning of 4.92 mills."

Again (p. 110):

"The revenue per ton mile, however, according to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50-cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seem to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50-cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore if the reason given by the Commission for permitting an advance in rates to points east of the Pembina-Port Arthur line seem to it to be of sufficient weight to authorize their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable."

It is therefore undisputed, because based upon mathematical calculations from conceded distances and rates, that the average haul to St. Paul is much longer and the average revenue per ton mile substantially less.

These factors were *the reasons given by the Commission for permitting higher rates* than those prescribed to the Pembina line.

But it remains to consider the relative conditions of the haul to Omaha and that to St. Paul.

We first notice the remark in the Oregon opinion (above quoted) that "it is urged that the rate from Portland to Omaha should not exceed the rate from Portland to St. Paul."

The complainants made this contention before the Commission. Shippers on the Coast for some years had been using the abnormally low 40-cent rate in effect to St. Paul as an argument for the same rate to Omaha, a longer distance.

W. C. Miles (Vol. 3, Trans. p. 1170) testified:

> "The main object, as I understand, of opening the Portland Gateway was that we could make the railroad companies equalize the rates, and go to the Missouri River for 40 cents, the same as we went to St. Paul for 40 cents, which would give the fir men a chance to compete with the yellow pine men." (See also Emerson, p. 1184.)

Under authority of the stipulation in the record (Vol. 3, Trans. p. 911-2), we quote from brief of the Oregon Complainants filed with the Commission:

> "The shippers have always chafed under the difference between the rates of 50 cents to Missouri River points as against the 40-cent rate to St. Paul, *a longer distance*, and have endeavored to have this discrimination voluntarily removed, but thus far without success." (Mr. Teal's brief, p. 30.)
>
> "It will be seen that the Northern Pacific hauls not only 200 miles further for the same rate as the Union Pacific, but in nearly every instance on equal distances the *advanced* rates on the Northern are lower than the old rates on the Union Pacific system." (Mr. Teal's brief, p. 43.)
>
> "The Northern Pacific's advanced rates (which are generally lower than the old rate of the Union Pacific) according to its traffic officials, will enable that road to haul the necessary empties west and lumber east and make a reasonable profit. Does not this admission show beyond question that the advance in rates by the Union Pacific is absolutely without justification—is purely arbitrary—without regard to the rights or interests of the public?"
>
> (Mr. Teal's brief, p. 189.)

Inasmuch as the Commission fixed and established 50 cents to Omaha as a just and reasonable rate, the prayer of the Oregon shippers was not granted, but it is a plain deduction, so far as the *relation* of rates is concerned, that those shippers believed that there should be equal rates to the two points.

The Master said (Vol. A, No. 451, p. 109):

> "Before the Commission in these proceedings, the complaining shippers urged that there should be equal rates upon this lumber traffic from the coast to St. Paul and to Omaha. These shippers urged that the 40-cent rate in effect to St. Paul and Minneapolis prior to November 1, 1907, should be applied to Omaha and the Missouri River territory generally, and it is fairly to be inferred that this position was taken in accordance with a conviction that conditions commercial, as well as otherwise, were so alike as to require equal rates.
>
> "From the deliberate conclusion, however, reached by the defendant that the 50-cent rate was just and reasonable upon this traffic to Omaha it is plain that the 40-cent rate asked by the shippers could not be."

The Master found that rate conditions between St. Paul and Omaha on the one hand and Coast territory on the other have, on many other forms of traffic, been always the same, and that prior to 1893, there were equal lumber rates to those points from the Coast.

He held (Vol. A, No. 451, p. 108):

> "It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the

result of competitive and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between Omaha and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case the City of Spokane, et al., v. Northern Pacific Railway Company, et al., decided June 7, 1910, 19 I. C. C. 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in the coast territory, as well as the Spokane territory, on the other, should normally be upon an equal basis.

"Thus the Commission said in the case above cited:

"'There is no condition of construction or operation, or financial result, which would justify the Union Pacific lines in maintaining a higher rate for 1500 miles from Omaha west toward Portland, than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle.'

"While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this east bound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the eastbound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may

> be regarded in connection with the other considerations referred to as an important matter for consideration.
>
> "The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike."

It is obvious from general knowledge, that the physical conditions affecting operation upon these transcontinental lines leading from the northwest, are substantially alike. They cross the same mountain ranges and the same long stretches of territory affording little traffic (Dissenting Opinion, p. 64). The Northern lines at times, may meet with more difficulties from snow and cold weather. In the Oregon opinion, the Commission said:

> "In 1906 the Great Northern by reason of snow blockades, expended over $950,000 in addition to loss through suspension of traffic."

The essential differences in condition affecting this traffic, however, are the longer haul and the greater west-bound empty car movement on the Northern lines, occasioned largely by the demand on the Coast for east-bound lumber loading. (See infra, Section B of this argument.)

These differences would appear to justify higher rates to St. Paul than to Omaha and certainly make

it plain that no lesser rates can under the law be justified.

In the tariffs of November 1, 1907, carrying the advanced rates, it will be noted that while the carriers to St. Paul published the rate on fir to St. Paul at 50 cents, the lines leading to Omaha advanced the rate to 55 cents. It will be urged that this relation was fixed by the carriers in recognition of a competitive differential necessary to permit coast lumber to meet northern pine in competition in Minnesota; and that the Commission in determining upon 50 cents at Omaha and 45 cents at St. Paul merely carried out the carrier's conception of a fair relation, but upon a lower basis.

It is sufficient to say that this was not a differential based upon market conditions and no suggestion can be found in the entire record that such was the purpose of the carriers. Neither can there be anything found in the opinions of the Commission advancing that idea. Indeed there would scarcely be found a more conclusive exercise of unwarranted power on its part than that which would result, if such had in fact been its reason for this marked disparity in rates. The express reasons given for permitting the 5-cent advance, however, negative any such purpose. Instead of permitting 50 cents at Omaha and only 45 cents at St. Paul because of competitive conditions at St. Paul that did not exist at Omaha, the Commission expressly stated that the reason was because of the longer

haul to points east of the Pembina line and the lesser revenue per ton per mile. Thus the Commission held that distance in the making of these rates was the prime consideration. Finally, so far as the relation established by the tariff of November 1, 1907, is pertinent here or indeed open for consideration upon these appeals, it is sufficient to point out that ever since 1893, these rates have been made by the St. Paul lines leading to Chicago via that gateway. The Omaha lines have had to meet the competition thus forced upon them. Therefore when the Northern lines advanced the St. Paul rate to 50 cents and the Chicago rate to 60 cents, the Omaha lines made a similar advance in the Chicago rate via that gateway. The considertions that led the Omaha lines to determine upon 55 cents locally to Omaha are not before the court upon these appeals; neither are there any questions here or in the record below, touching the questions of the divisions of the 60-cent rate between the carriers east and west of Omaha or the considerations upon which those carriers arrived at those divisions. The Northern lines do not go to Omaha, neither do the Omaha lines reach St Paul (the Burlington is only a connecting carrier and none of this traffic originates upon its lines). The Northern lines determined upon 50 cents as just and reasonable from the Coast to St. Paul. The lines from the Coast to Omaha considered 55 cents to Omaha to be reasonable. The Commission con-

sidered the 55-cent rate for the haul to Omaha and found it to be unreasonable. In lieu of that rate, it adjudged 50 cents to be fair. We earnestly insist that under the showing of the longer haul and the lesser revenue per ton mile to St. Paul it was the assertion of arbitrary and unreasonable authority to at the same time, and in direct opposition to the very reason stated, deny an equal rate on the traffic moving via St. Paul.

B.

Dealing with the second proposition, we come to a consideration of the state of the record before the Commission.

> (a) Complainants offered the evidence of one witness, Lew Anderson (Vol. 3, pp. 913: 1147), who asserted some knowledge and experience with rate matters. He produced many exhibits containing historical facts relating to these rates, compiled from tariffs. These facts were not in dispute. Exhibits 11 to 20 (Vol. 3, pp. 976-1011) and 23 to 26 (Vol. 3, pp. 1021-1023; 1147-1152) are comparisons of rates covering this traffic with various lumber rates from other portions of the country.

It is not necessary to deal with these exhibits in detail. The Interstate Commerce Commission has repeatedly held, and so have the courts, that comparisons of rates in different sections of the country, are of little if any value, unless it be shown that the conditions are substantially similar.

On cross-examination of the witness Anderson, it

was affirmatively shown that the rates he had selected did not present fair comparisons. (Vol. 3, p. 1024: 1126.)

No other evidence was offered by Complainants bearing upon the character of the advanced rates or the facts proper to be considered relating to the transportation service rendered. In this state of the record, it is not to be wondered that the Commission gave the evidence of this witness no weight.

In the Oregon case the Commission said (Vol. A, No. 451, Trans. p. 54):

> "Numerous comparisons have been furnished showing the rates from the yellow pine producing points to the territory affected by the advanced rates. They throw little if any light upon the question at issue except to show the ton per mile rates. In every instance, however, the haul from the yellow pine producing point is so materially less than the distance from the Pacific Coast points that the comparison is of little value."

(b) Other than the evidence of the witness Anderson and certain tables of statistics taken from the reports of the carriers, relating to earnings and operation, traffic statistics, etc., the record made by the Complainants before the Commission consisted wholly of testimony and exhibits from lumber manufacturers in the Coast territory. In the distribution of the evidence offered by the Complainants between the several cases, manufacturers from various portions of this territory were produced, several from the Willamette Valley, Portland, and other Coast points north thereof, to the vicinity of the Canadian boundary. The testimony of

these witnesses as shown in the agreed abstract, is contained in Volume 3 of the transcript, beginning with that of A. C. Dixon at page 1027 and concluding with that of J. H. Bloedel at page 1265. Among these witnesses were also several lumber salesmen and one or two lumber-yard men from Illinois and Iowa (George P. Rinn, page 1103; Arthur Nollau, page 1107; and John W. Barry, page 1258), and the publisher of a lumber publication at Portland, Oregon (George M. Cornwall, page 1112).

It is difficult, without expanding this brief to an undue length to reproduce in any concise form, the substance of the testimony of these witnesses. The proof of the proposition now under consideration involves the proof of a negative, that is, that the evidence of these witnesses contains no proof bearing upon the reasonableness of the rates of November 1st, 1907, for the transportation service rendered. The difficulty, however, may be substantially avoided by looking to the opinions of the Commission in the Oregon and Washington cases. This may at least be done, with perfect fairness to the Commission for the reason that in its answer (Vol. A, No. 451, p. 40, Par. XV) we find the following:

> "Defendant says that the facts shown by said investigation material to be considered by this defendant are stated fully, fairly and completely in said report."

We are, however, not content to leave the interpretation of these opinions wholly to the recitals

therein set forth and deem it essential to a correct understanding that there be some reference to the record before proceeding to the opinions.

A. C. Dixon (Vol. 3, p. 1027) and R. A. Booth (Vol. 3, p. 1071) testified in behalf of the Booth-Kelly Lumber Company, a large producer in the Willamette Valley, south of Portland Their testimony dealt in detail with the conditions, past and present, affecting the manufacture of their output and the general condition of the lumber industry in their territory. They spoke at great length of the vital statistics of the industry, the number engaged, the annual payroll, the character of the towns and population therein, showing their relation to the industry, discussed questions relating to logging and cost thereof, stumpage and changes in prices thereof, increases in cost of labor and all the main articles of supply, taxes, hazard involved in their investment, and competitive markets which they were able to reach. They dealt with the condition of the industry in the latter part of 1907 and discussed the question to what extent the closing of mills had been caused by the general financial disturbance in the country and the advance in the rates under investigation. They stated their average cost of production and average selling price, giving also prices of various typical grades of lumber, and comparisons with prices on similar grades from other competitive markets. Typical exhibits were offered showing percentage of shipments over

a period of years to various eastern destinations and typical cars shipped, showing weight, earnings per car, cost at mill and kinds of lumber shipped.

Edward D. Kingsley, Manager of the Bridal Veil Lumbering Company, west of Portland (Vol. 3, p. 1075), B. C. Miles (Vol. 3, p. 1095) Secretary of the Charles K. Spalding Company, Newberg, Oregon, 26 miles south of Portland, Phillip Buehner (Vol. 3, p. 1121) treasurer of the Eastern and Western Lumber Company of Portland, and president of the Oregon and Washington Manufacturers' Association, W. C. Miles, Globe, Washington, manufacturer of lumber (Vol. 3, p 1156), George H. Emerson (Vol. 3, p. 1173) Vice-President of the Northwestern Lumber Company on Gray's Harbor, J. H. Bloedel (Vol. 3, p. 1192) of the Larson Lumber Company, Bellingham, Washington, Everett G. Griggs (Vol. 3, p. 1231) president of the Pacific Coast Lumber Manufacturers' Association, and connected with the St. Paul and Tacoma Lumber Company, all testified to substantially the same effect, and their testimony is substantially all that was offered by the complainants. The evidence of the remaining witnesses, who were lumber salesmen and lumber yard men, followed the same lines and added no other features than those discussed by the witnesses named.

The substance of all of this evidence, when we lay aside statistics relating to the industry, and opinions, relating to its then condition, may be

fairly summed up in the assertions made, that in their opinion the success of the industry required the continuance of the old rates. It was shown by the witnesses that the production of lumber on the Coast had so expanded, that a large surplus of common grades was being produced which could only be marketed in eastern competitive territories, and that this could not be done except upon the old rates.

Thus, Mr. Dixon testified (Vol. 3, p. 1068):

> "Now I presume from our figures which I have explained and which I have not had time to total up, we will show something less than 50 per cent of our output shipped east of the Missouri river. In the case of some mills I am familiar with, the showing will be greater and in some less. I am unable to determine just what the average will be, but probably larger than ours.
>
> "I want to say that the price at which this, we will say, 40 per cent of our material, whatever it is, is sold at, determines the success or failure of the lumber industry on the Pacific Coast in my opinion. The 35 per cent that we sell at less than cost is sold close to the coast, or on the coast or locally, perhaps locally, some of it.
>
> "The percentage that we ship east carries with it a profit sufficient to care for the lumber shipped east, and to make up for the loss on the other lumber perhaps. If we cannot ship that percentage of our lumber we cannot in any way that I can see make up for the loss on the other. If we cannot ship that from thirty-five to forty per cent of lumber that

now goes east I am unable to see how we can operate unless we can dump that surplus, which we have been trying for years at great expense to work off, back on the coast markets. If we did this, there would not be any coast market in thirty days or less time because the coast is now absorbing all it can take care of."

And again (p. 1069):

"We are not making any provision for the waste. We just want a rate that we can do business on the same as we have been doing for the last ten years. We could sell the thirty-five per cent east if we had a low enough freight rate."

Mr. Kingsley testified (Vol. 3, p. 1079):

"Knowing as I do the conditions which will result and also the margin of profit that the business of these mills had been handled on in the past, from some little inquiry I have made of their business in the past, I should have considered it would have been a very poor business proposition to have invested money in the construction of this new plant there, had I known there was going to be an advance in freight rates on lumber. I do not think the management would have done so. I certainly should not have done so."

And again (p. 1080):

"Our nearby trade is very large, however, on account of our being an old established business. The reason why only 25 per cent of our output moves into the affected territory, it has such an effect upon the lumber business in the State of Oregon and of the entire northwest, is that you cannot cram the trade in the affected territory into the limited territory in the west. The class of lumber that moves

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largely into the affected territory, consists of what we call the upper grades. A very large per cent of manufactured lumber is a common grade of lumber, and we have to have a market for the other.

"Assuming that these rates stay in effect and assuming that the result of these rates will prevent shipments east to the affected territory, the effect in my judgment will be that it will be a case of the survival of the fittest; that a few of the stronger and larger mills will continue to operate, and the weaker mills will have to liquidate, which they cannot do, and probably go out of business. The final result of that process will be to simply throw the lumber industry into a few hands in my judgment. I believe it will wipe out quite a number of the mills that are not strong enough to go through the season. It will wipe out sufficient at least, to absorb this amount of lumber that has been going east."

Mr. B. C. Miles testified (Vol. 3, p. 1096):

"I should judge approximately thirty per cent of our shipments are into this affected territory. If the territory were cut off entirely so that under the new rates shipments could not be made, the effect would be that we could not run our mills. The thirty per cent taken away from our markets would force us to come in competition so severely in the territory left and the prices would so drop that we could not sell our stock at a profit."

George M. Cornwall, publisher of the Timberman, of Portland, testified to an investigation into the condition of the industry in Oregon in 1907, just prior to the hearing, and reported that he had

ascertained by reports, that more than 165 mills were then closed and others running on reduced time. This he attributed partly to the advance in rates and partly to the general financial disturbance. He expressed his opinion as to the effect of the advanced rates as follows: (Vol. 3, p. 1113).

> "Assuming that this advance in rates prevents shipping, in my judgment, it would simply amount to this: that if these mills which are closed, which are not possessed of a large amount of capital, there will be only one thing left for them to do, that will be to liquidate. The final effect would be they would go out of the lumber business, and there would be fewer people engaged in the lumber business in the State of Oregon."

W. C. Miles testified (Vol. 3, p. 1166):

> "I have heard of this advance in rates for several years; it has been a rumor all the time. It has been a general rumor in our country since the spring, published everywhere and talked about. It was discussed in the Association meetings, and from that time the orders began to slump off in this section of the country. The whole community is probably dependent upon that industry. It is my opinion that this increase in rates cannot be absorbed by the mills."

Similar testimony was given by the witnesses, Emerson (Vol. 3, p. 1175, 1178, 1181) and Bloedel (Vol. 3, p 1195-6: 1197-9).

Mr. Bloedel testified (Vol. 3, p. 1195) to investments made after discussing conditions with repre-

sentatives of the railroads, in past years, and while he does not claim that any assurances as to the continuance of rates were given, he stated (p. 1196):

> "Had there been at that time any question about the rates, I would not in any way have encouraged my partner to invest the money in this mill. There was nothing said about the rate one way or the other; it was largely a question of car supply. But the inference that we had, from doing business on that rate, a matter of about thirteen years, was that it would be reasonably continuous, and on that assumption we built the mill."

Again:

> "We feel that we made a foolish investment, in view of the raise. It is one that will now depreciate, that we will have no use for until the conditions in the lumber business change radically."
>
> (Note—An examination of such exhibits as Dixon No. 1, Vol. 3, p. 1045, Buehner Exhibit No. 1, p. 1125, in connection with the testimony of these witnesses and the recitals of facts in the opinions of the Commission, all showing increases in the cost of logs and expenses of manufacture much more in amount than the increase per hundred weight or per thousand feet resulting from the advanced freight rate, leaves some doubt at least about the correctness of these grave predictions.)

The opinion of the Commission in the Oregon case (Vol. A, No. 451, pp. 44 to 64 inclusive) contains an analysis of the testimony offered by the complainants and we assert that it may be searched

for evidence other than above indicated, excepting as it was offered by the carriers. The Commission found the facts relating to the history of the rates and the enormous increase under the old rates of the lumber industry. It stated the amount of the investment and annual output, the range in prices of stumpage, logs and lumber, the increase in the cost of manufacture and the average profits shown in the record. It stated the facts relating to competition of Pacific Coast lumber with that from other producing districts.

The Commission said:

> "The widest possible market for their medium and common lumber is what the North Pacific coast lumbermen need most, and every market that can reasonably be opened to their common lumber operates to lessen the waste and destruction in the natural supply."

And again:

> "It is insisted by the defendants that the advance in the rates will not affect the entire output of the North Pacific coast, because at least 50 per cent of that output does not reach the affected territory. But it is clear that Pacific Coast lumber sold in that territory must be the surplus that cannot be advantageously sold in the nearby markets, and if that surplus is thrown into the nearby markets a lowering of prices would inevitably flow from the elementary economic law of supply and demand."

The Commission then noted the evidence offered by the complainants showing the results of operations of the carriers from their total business and concluded that from this it appeared "that the schedule of rates applying to each defendant line, as a whole, furnishes sufficient revenue."

With this analysis of the complainants' proof the Commission proceeded to discuss the evidence offered by the carriers.

SUMMARY OF EVIDENCE OF CARRIERS.

Howard Elliott, President of the Northern Pacific Railway Company, testified (Vol. 4 p. 1372 et seq.) regarding the history of the old rate, the reasons which led to its reduction in 1893 (which will be hereafter adverted to), and the change in conditions which had since occurred.

He testified (p. 1374) to a critical comparison of the *comparative* cost of transportation over the lines of the Northern Pacific, Great Northern and Illinois Central lines, based upon his education as a civil engineer, a comparison of the profiles of these lines, and a consideration of certain comparative cost statistics prepared from published reports. This comparison was made for the purpose of reaching an approximate basis for reducing operating conditions on these three lines to a common ground. This afforded a fair means of comparing the reasonableness of the advanced rates of November 1st, 1907, with rates established and approved by the Commission for the transportation of yellow pine lumber over the Illinois Central and other

southern lines from McComb, Mississippi (a representative point of production), to Chicago, reported in Central Yellow Pine Association vs. Illinois Central Railroad Company et al, 10 I. C. C. 505. He reached the result that the comparative expense of hauling freight on the Great Northern and Northern Pacific was respectively 129 and 131 per cent of the cost on the Illinois Central line.

For the same reason, that is to say, for comparative purposes only, certain exhibits were offered by the carriers before the Commission by the witness Hinckley, Vol. 4, p. 1395-1406.

The Commission discussed Hinckley Exhibit 3, which is a table necessarily by approximation, of the *comparative* cost per loaded freight car mile, arrived at by dividing total operating expenses and taxes by mileage of loaded freight cars on the different lines in question. This exhibit was not offered as a basis for determining actual cost because, obviously, it was open to many objections if so offered, but as stated, it was offered as a basis of *relative* cost, computed for each line upon the same basis and therefore offered a comparison of some value, and consequently a means of comparing the rates in question with the yellow pine rates approved by the Commission.

The opinion of the Commission in the Oregon case, however, seems to have taken this exhibit, as well as others, as offered for the purpose of showing actual cost. It proceeds to deal with this and

other exhibits with the same mistaken idea, producing results of no apparent value to the question of the reasonableness of these rates; indeed, the Commission did not deem the results so drawn as of any value and properly said:

> "These calculations show how easy it is to play with figures and make them prove almost any desired result."

The purpose of the exhibits, as of the testimony of Mr. Elliott, was as stated, to offer a basis for comparison only, and in this aspect of the matter it does not appear that the Commisison gave these exhibits and testimony any consideration whatever. We may lay them aside therefore from further consideration in this brief. They are referred to merely to indicate a part of the carrier's proof; they throw no light upon the grounds of the Commission's orders, except as it appears that the Commission misunderstood the purpose of them. One other exhibit offered by the carriers and discussed by the Commission may be noticed before passing to a consideration of the findings of the Commission upon the essential facts upon which the carriers justified the change in rates.

Maguire Exhibit 3, Vol. 4, p. 1485, is a comparative statement of the earnings of a car engaged in hauling lumber with a car engaged in hauling other commodities on the Great Northern lines. (Opinion, Vol. A, No. 451, p. 54.) The con-

clusions reached by the Commission were based upon the use of *minimum* carload weights of these commodities as carried in the tariffs, which wholly ignore *actual* weights ordinarily moved. The exhibit shows the actual average weights of a very large number of cars of the different commodities and the actual earnings therefrom. It was argued, as the Commission notes, that minimum weights have little to do with actual average weights and although as the Commission says: "the tariffs establish the minimum weights," the exhibit clearly shows that upon east and westbound traffic both, the average earnings per car of these various commodities compared with lumber are much in excess of lumber earnings.

REASONS FOR THE ADVANCE.

In accordance with the rule laid down by this Court there is no presumption that an advance in rates is wrongful, unjust or unreasonable. The carrier in such case is required upon proper inquiry, however, to explain its reasons for the advance and support its explanation by proof.

As the Court stated the rule (209 U. S. 119):

> "Undoubtedly when rates are changed the carrier making the change must, when properly called upon, be able to give a good reason therefor; the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done."

The Commission in Memphis Cotton Oil Co. v. Illinois Central R. R. Co., *et al.*, 17 I. C. C. 313, thus interpreted this holding:

> "An advance in a long-established rate at once suggests the propriety of an inquiry of the carrier for a statement of its reasons for making the advance. But in making its explanation, if we correctly understand the meaning of the court in the case above cited, the carrier is not under the necessity of overcoming the technical weight and force of a presumption of law that the previously existing lower rate was a reasonable rate. The long continuance of a lower rate may be said to raise a presumption of fact that the advanced rate is unreasonable. But this in a sense is no presumption at all, for it can not carry us beyond the actual tendency of the fact itself to produce that belief in the mind of the investigator. The fact that the lower rate has long remained undisturbed has strong probative value. Considered merely as evidence, such a rate history, in the absence of some explanation that satisfies the judgment of the propriety and need of an increase in rates, would ordinarily have great force. But in every case we must consider and weigh all the other facts of record before arriving at the conclusion that the increase in rates was unreasonable and therefore unlawful."

In compliance with this rule the carriers appeared before the Commission and gave their reason for this advance.

That reason was and is the increase in cost resulting from changed conditions.

The increase in cost has been mainly brought about by (a) increase of wages; (b) increased cost of all materials and supplies; (c) reversal of empty car haul caused by lumber traffic; (d) enormous increase in expenditure out of capital to meet requirements of increased business, largely chargeable to the eastbound lumber traffic.

The reasons for the advance in rates were given by Mr. James J. Hill, chairman of the Board of Directors of the Great Northern Road. Each and every fact testified to by him was within his personal knowledge and experience.

Upon the question of the cost he testified that in 1893 lumber was very low (Vol. 4, p. 1267):

> "We bought fir lumber for five and five and a half and six dollars a thousand. We then saw that clear lumber, sway bracing, caps and stringers for trestles, without a knot, selling for $5.00, $5.50 and $6.00 a thousand.
>
> "After the financial depression in 1893 business was very dull on the Coast. Cedar shingles were manufactured and sold very low. In 1893 standing timber was very cheap. Some distance back from the road it was as cheap as 12½ or 15 cents a thousand. Nearer the railroad at what lumbermen called good chances, lumber could be had at 25 cents. The advance commenced almost entirely after 1897. The necessity for advancing the rate was the increase in the cost. The increase in the cost for the last eighteen months or two years has been from 30 to 40 per cent., and the heaviest increase has been in the last six or eight months. That consists of the increase in the

cost of supplies of every kind. There is a very great increase in the cost of supplies. A very large part of our supplies is lumber. All the organized branches of labor have been materially advanced. In 1892 when we were building we bought lumber out there for $5.00 a thousand and there was no depression. We were extending our railroad and so far as the lumber interest was concerned, it was a question of loading back cars. Standing timber was very much cheaper then than now.

"I question if expenses were ever lower than $1.00 per train mile. Our present rate—the cost—is about $2.00 a train mile. It has advanced very materially since that time. On some divisions it will run up to $2.25. According to the conditions now the cost is very, very much greater. It is greatly enhanced. I think the rate from the Pacific Coast east on lumber is a very low rate; the lowest rate that I am familiar with.

"If the railroad is built into a section of the country it has got to carry what that country produces or go without it. Now the question is if it can carry what that country produces and get a profit out of it and enable the producer to make a profit, both are on a sound basis. You cannot tell to an exact point whether you get a profit out of the movement of a particular commodity or not, but you can get it approximately. You have to consider the length of the haul. I should think that would be elementary. Up to a certain point you consider the tonnage. Up to a certain rate, up to a certain point the general rule is that the greater the tonnage the lower the rate, but when traffic increases beyond a certain point, then it adds to the expense, and it costs you more when you overload the machine, for carrying it.

"The reason why I think this is an abnormally low rate is because it brings us less than it costs to furnish the service. I can show that to the Commission now. The average distance between cities is about 2,000 miles, to the Coast, just about 2,000 miles. But, during the past summer I had occasion to look it up closely. I found we moved more empty cars over the main range and over the Cascade range west of the point involved in this question than we did loads. Now, to take a car out and back, every car that goes to one end must come back, they have to come back. It costs from seven to nine cents a mile on distances of four hundred to five hundred miles, and more, to haul freight cars. If the entire travel is 2,000 miles out and 2,000 miles back; then that car travels 4000 miles, and at seven cents a car mile it would be $280.00. It would cost that without any return for the use of the property, without any taxes—simply the money that is paid out to move that car. Put 50,000 pounds of lumber into that car at 40 cents a hundred, and you get $200.00. You have paid out $80.00 more for every car you have moved out at the minimum. Now, at some time in the year—take it in the winter months—the train load is lighter, it must be reduced on account of the extreme cold weather, and the cost is higher. I would say that about 7½ cents—from 7 to 7½ cents—and on many roads it is greater than that. I do not say that we have to haul all the cars west that come east loaded with lumber, empty. No, I said that we haul about one-half, and sometimes more than one-half of our westbound cars empty. That is to bring lumber back.

"What I wish the Commission to understand is that when we do carry an empty car over there and bring it back, haul it both ways, that

we lose from $80.00 to $100.00. Under those circumstances I mean to say that we are transporting lumber for less than the cost. Those circumstances very frequently occur. They have occurred every month in the last year, and as high as 60 and 70 and 80 cars a day.

"At the time the Great Northern was built through to the Coast there was very little lumber moving eastward. I do not think the rate was so high that lumber did not move eastward. There was very little increase in the movement of lumber east until the stumpage in the white pine districts of Minnesota, Wisconsin and Michigan very largely advanced. When I first went out there, I paid 90 cents a hundred for a carload of cedar from Westminster, at the mouth of the Fraser River, to Winnipeg. Before we put our road in, the rate had been reduced. Possibly the building of our road had something to do with it. It had been reduced to 55 or 60 cents, something in that neighborhood. I wish to state that for two or three years after the 40-cent rate was put in there was very little lumber movement eastward upon that rate.

"I say the wage rate has gone up in the last year very considerably. In the last year all wages of engine-men and train-men have been advanced, and of common labor very largely. Common labor up to $2.00 and $2.50 a day from $1.50, very hard to get and very indifferent labor at that. We employ Italians and give them $2.00 and as high as $2.50 a day. I think that within the past year there have been substantial increases. I think it was about a year since the locomotive engineers were advanced to $5.00 a day. Not $5.00 a day in hours. It is $5.00 per 100 miles, and when they run a passenger train 200 miles, which they usually do, they get paid for two days. The wages of

those engaged in operating the road as distinguished from construction men have been advanced during the past year. The section men have had the same rate of wages that other labor has had. The wages of the train crew are not the same as they were a year ago or two years ago. They have been materially advanced. The Commission was called in to settle some of those cases. There were advances to clerks and everything. The cost of living has materially advanced, and wages have also.

"In making my estimate showing $80.00 loss upon every car of lumber moved, I did not estimate that the car went from Minneapolis to the Coast empty. I said that the $80.00 or $100.00, or in some cases $120.00 would be the loss on the car that was moved empty in one direction. I paid a good deal of attention to that at times this summer, and sometimes I would find as many empties going west as loads, and some days more empties than loads. Any car that moves west empty and comes back with a load of lumber is carried at a loss.

"The empty movement west causes the increased cost of this traffic. I will explain that. If the westbound traffic made more empties on the west end than the lumber would load, all the roads would be glad to carry at 40 cents rather than bring the car back with nothing. The increased cost of the traffic is the cause of this advance, and the empty car movement is a part of the increased cost. The increased cost is the cause of this advance and the other is an element of that increased cost.

"All rates should be reasonably profitable. Taking this year as the basis, the 50-cent rate is a low rate but it is a rate that should be

compensatory. I think it would. At any rate, it would be more nearly compensatory than the existing rate.

"I said the lumber movement had increased the cost because of the increased number of cars required to be hauled west empty.

"One of the reasons for this increase in rate is to make up for an increased expense account on the Great Northern, on account of the haul, by reason of this expense, being unremunerative at this time. That is correct. The advance is to make a lumber rate compensatory, and not that other business in other states should contribute to carrying lumber for less than it cost. That is the fact today. There is no doubt about it.

"In some places it is true that a good deal of increased cost came from station service due to increased business; and in other places that would not apply. There is an increased cost on account of wages.

"Our train haul has constantly increased, and last year, including company freight and commercial freight, it would be whatever the report shows. Our cars have increased in capacity constantly, and we have spent large sums in improving our roadbed; also in making the rails heavier; all of that, and we have to even relocate new lines in the mountains, that we thought were at very low grades. We have also increased the car loads quite heavily. We have tried in every way to economize and to get more for the dollar we spend. If we should go back to 25 years ago and take the expenditures of that time, it would be quite large, and we have done everything we could to increase the load, to increase the carload and the train load. We have laid heavier rails. We have rebuilt sections of the road to get lower grades, and in that time our rates have

been reduced from 2½ cents a ton a mile to ¾ or about ¾ of a cent a ton a mile. I think the total reduction in twenty-five years would amount to $750,000,000.

"There was quite a sharp jump in our operating expense account in 1907 over 1906. The operating expenses were not written up at any time last year more than any other year before, but were written up just the same.

"Up to the extent that the road can move its trains with reasonable regularity, the increase in tonnage would be an advantage. The increase in tonnage would enable the road to operate for less. In other words, if everything is moving right on the road, not crowding it beyond its capacity, it would be a means to enable the company to move its traffic at a lower cost; but if crowded to an extent greater than the capacity of the road, it would increase the costs very quickly and very materially. For the year ending June 30, 1907, the ratio of operating expenses to gross earnings was higher than it has been for several years. Taxes are higher, too; taxes are constantly increasing. If these betterments and grade reductions, additions to equipment and other improvements had not been provided, the present rate of traffic would not have paid the expenses on the basis of twenty years ago."

Howard Elliott, president of the Northern Pacific Railroad Company, testified: (Vol. 4 p. 1372):

That one of the first questions that was presented to his attention when he became president of the Northern Pacific was the subject of the lumber rates from the Puget Sound Country east. He

attended a meeting in Tacoma in 1903 with the lumber men at which some were asking a reduction in the rates, and others increased facilities.

"And then I began to make inquiries as to the rate and to inform myself somewhat about it. It seemed to me then that the rate was very low, abnormally low, compared with the rates with which I had been familiar in other parts of the country. For several years I had been thinking about this lumber rate and some of the conditions that led me to think that our company was justified in making an advance can be briefly stated.

"The past history of the rate I think has been more or less touched upon. It was put in, as I understand it, fourteen or fifteen years ago, at a time when the cars on the Pacific Coast were not getting any return loads. It was obviously desirable to load those cars back if they could be so loaded.

"At that time, seven or eight or even five years ago, the Northern Pacific Railroad Company was not taxed beyond its reasonable capacity as a freight carrier, so it was justified, perhaps, in taking on, what might be called extra business at rates far below the average and in using facilities for the benefit of the patrons of the road, that otherwise would not have been used but might have lain idle. In the last two or three years those conditions have very radically changed. The company has been taxed far beyond its capacity, so that the lumber business can not in any sense be called extra business that the company would be justified in taking at an abnormally low figure.

"Another question that has come up to a very marked degree in the last two or three

years, more particularly in the last eighteen months, is that the general costs of conducting the railroad business in the United States and in the northwest particularly, have shown very marked increases. Now, this great increase in business, and particularly in the lumber business—has forced the railroad company, in an honest effort to look after it, to make very large investments in its property. Our company, I think, has spent in the last five years for equipment and additions to its track, and improvements of that sort, approximately seventy-five million dollars, in order to increase our ability to produce the required amount of transportation demanded by the country, through which the road runs. That sum of money has been spent all along the line, but a very large part of it has been spent west of Billings, Montana, and a very large part of it was induced, or the decision to make a very large part of that expenditure was induced by the thought of trying to provide additional facilities to help handle the products of the country, of which lumber is one of the most important.

"Some return must be obtained upon that investment, some consideration must be given to those very large investments.

"My personal opinion,—and it is always hard to bring actual proof of such a thing, but my personal opinion is—that in the last eighteen to twenty-four months we have not got a new dollar for an old one from the lumber business on the Pacific Coast. We have tried to do the best with it we could, and some of these gentlemen know that they have made us feel very uncomfortable because we were unable to furnish them with the facilities that they naturally desired for the proper expansion of their business.

"The empty haul west was not the sole cause for this advance in rate; it is one of the causes. I think the advance will put us in a much better position to bear the burden of taking empties, than we were in before. Even on a 50-cent rate I am not clear with the way our expenses have increased, that we would be justified in hauling empties all the way to the Coast in order to get lumber. The lumber tonnage has exceeded our capacity to handle the traffic for the last eighteen months.

"I think our charge for labor on the whole is higher than any other part of the United States except perhaps on some of the Southern Pacific lines in California and Arizona. Our average operating ratio has been below the average. The increase in cost is one of the reasons why I think this rate should be advanced; general increase in cost in conducting the railroad business. The empty car haul contributes to the increase in cost. Also the competition of traffic; the fact that we have more than we can handle. We think the lumber business for the last two years has been so great that it has added to the cost of our operations and hampered us in transporting business, and if it had been somewhat less, the results to us would have been much better. We did not try to limit it. We did everything we could to help it.

We wanted the lumbermen to go on and do their business.

There has recently been some decline in wages of what you may call common labor, but there has been no decline so far as to be effective in the prices that we are paying for materials. Our tie contracts that we made for 1908 are on just as high a basis as in 1907. I doubt very much whether the wages of the men

in what are called the organized trades, will show any reduction unless times get very much more serious than they are now.

"The ordinary arrangement of the ordinary trades in our country is that they are supposed to be for a year; but either side can give thirty days' notice in most of them, and call for a hearing, call for a negotiation either for an advance or for a reduction. Of course, for the last few years we have had notices in between the yearly dates for advances, and have had to make them, more or less; and as already stated, I doubt if any reductions can be made unless the general conditions in the country are very much more serious than they are to-day. I don't think the labor organizations will stand for it. I don't know that they ought to.

"In the lumber business there is an element of expense which does not exist in any other business. We have very often to switch out carloads of lumber because of the fact that the load has shifted, and we have to put the car on the sidetrack and arrange to load, put it in order, so that the car will run safely.

"In 1903 the train movement was 94.25 miles per day, and 1906 it was 86 miles. That decrease in the car movement increased our expenses, because we had to have more space for cars to stand around, more yards to hold them. We had to have a larger equipment to do the given volume of business, and that meant more car repair and more inspection.

"The maximum of loaded cars west of the Cascade Mountains in the winter of 1907, waiting to be moved, was about 5,000. These cars would be about 45 feet long, so that we had about five thousand times 45 feet, that much space occupied with cars on sidetracks west of the Cascades. We had not shortage yards

in which those cars were placed; and, I am sorry to say, they were strung all the way from South Bend to the top of the Cascade Mountains. At Gray's Harbor the sidetracks were full, at Tacoma the sidetracks were full, and at Seattle the yard was full of those cars. That increased our expense because it made it more difficult to get trains over the road. Instead of having passing tracks, we will say, every five miles or so, those tracks being occupied by cars, the trains might have to run ten or fifteen miles to find a place to meet, and in that case one train would have to wait until the other one got there, and there was a great deal more dead time. That led to overtime on the part of the employes. And there was increased consumption of coal, and we did not get the benefit of the coal while it was being burned to the same extent. An engine burns coal on the sidetrack, and that engine has not been performing any service. Of course, we lost the time and usage of our cars."

W. G. Johnson, Assistant Comptroller of the Northern Pacific, offered certain exhibits in evidence bearing on the increases in cost.

Johnson Exhibit No. 1 (Vol. 4, p. 1415) is a comparative statement for the years 1898 to 1907.

In 1898 it required 13.26 per cent. of earnings for the maintenace of way and structure; in 1907 it required 13.25 per cent. of all earnings to maintain way and structures, demonstrating that notwithstanding an enormous increase in the volume and density of traffic and consequent increase of gross earnings the Northern Pacific Company was

unable to maintain its way and structures with any less percentage of its gross earnings in 1907 than it was in 1898.

In 1898, the average daily wage in the department of maintenance of way and structures was $1.57; in 1907, it was $1.84.

In 1898, the average price of rails per ton was $19.11; in 1907, it had increased to $29.49.

In 1898, the average price of fir ties was 22.3 cents; in 1907, it had increased to 38.3 cents.

In 1898, the average price of all ties was 23.5 cents; in 1907, the average price of all ties had increased to 43 cents.

The general expenses in 1898 required 2.81 per cent. of the earnings; in 1907, but 1.56 per cent.

Summarizing this exhibt it appears that the percentage of earnings required for maintenance of way and structures remained practically stationary, with no saving in the presence of increased earnings and traffic, and general expenses were decreased 1.25 per cent.; but average daily wage increased 17.20 per cent.; average price of rails per ton increased 54.32 per cent., average price of fir ties increased 71.75 per cent.; and the average price of all ties increased 82.98 per cent.

Johnson Exhibit No. 2 (page 1417) shows the ratio of conducting transportation and maintenance of equipment for the fiscal years 1898 to 1907; also the average daily wage paid men in those departments, and the average price of coal per ton.

In 1898, it required 30.74 per cent. of earnings to conduct transportation and maintain equipment; in 1907, it required 40.13 per cent. of earnings for that purpose, an increase of 9.39 per cent.

In 1898, the average daily wage for the maintenance of equipment was $2.02; in 1907, it was $2.35; or an increase of 16.34 per cent.

In 1898, the average daily wage for conducting transportation was $2.35; in 1907, it was $2.77; or an increase of 17.87 per cent.

In 1898, the average price of coal per ton was $1.73; in 1907, it was $2.39; or an increase of 38.15 per cent.

Johnson Exhibit No. 3 (page 1419) is a statement showing the changes in freight cars and locomotives, 1898 to 1907.

On the Northern Pacific in 1898, there were 18,477 freight cars; in 1907, this had increased to 42,320, or an increase of 129 per cent.

In 1898, the total capacity of all freight cars in tons was 399,176 tons; whereas in 1907, the total capacity was 1,422,503 tons, or an increase in capacity of 256.36 per cent.

In 1898, the average capacity per car in tons was 21.6 tons; whereas in 1907, it had increased to 33.6 tons per car, or an increase of 55.6 per cent.

In the matter of locomotives this exhibit shows that in 1898, the Northern Pacific owned 542 locomotives, but in 1907, this had increased to 1,255; or an increase of 131.5 per cent.

The weight on drivers in pounds increased from 44,432,965 pounds to 163,924,173 pounds, or 268.92 per cent.; and the average weight on drivers per engine in 1898 was 81,980 pounds, and in 1907, it had increased to 130,617 pounds per engine; or an increase of 59.37 per cent.

These exhibits also reflect efforts made by expenditures out of capital and income to increase the capacity of the road to handle traffic.

Johnson Exhibit No. 5 (page 1424) compares the years 1898 to 1907 in the ratio of all operating expenses to earnings, in the reduction in the average revenue per ton mile, and the relation of tons of lumber and other forest products carried, to all tons of freight carried.

In 1898 the Northern Pacific Road operated for 46.81 per cent. of its earnings; in 1907 it required 54.94 per cent. of earnings to operate the road.

In 1898 the average revenue per ton per mile was 1.065 cents; whereas in 1907 it had been reduced to 0.866 cents.

In 1898 of all tons of freight carried, lumber and forest products were 26.14 per cent.; in 1907 the ratio had increased to 37.38 per cent.; and in this connection it is to be noticed that in the year 1904 the ratio was 39.79 per cent, and in 1906, 38.82 per cent. The evidence shows that the falling off in 1907 was not due to any shrinkage in the volume

of the lumber traffic offered, but to the stress of severe winter conditions and the inability of the road to handle its traffic.

Reducing the foregoing figures to percentages, the ratio of operating expenses in 1907 had increased 8.13 per cent. whereas the average revenue per ton per mile had decreased 18.68 per cent.; the volume of lumber and forest products tonnage had increased 11.24 per cent.

In 1898 the Northern Pacific expended 2.68 per cent. of its gross earnings to care for depreciation of equipment; and in 1907 2.95 per cent.

Taxes in 1898 required 2.88 per cent. of earnings; and in 1907 required 3.50 per cent. of earnings.

Summarizing this exhibit it appears that in 1898 to pay all expenses, depreciation and taxes, it required 52.37 per cent. of earnings; but in 1907 for that purpose it required 61.39 per cent. of earnings, leaving in 1898 as net earnings 47.63 per cent., but in 1908 only 38.61 per cent.

As showing the character of the earnings on the lumber traffic as compared to earnings on other freight, a comparison was made between the years 1904 and 1906, as shown in Johnson Exhibit 6 (page 1426).

In 1904, the average rate per ton per mile on Pacific coast lumber and shingles was 5.15 mills per ton per mile; whereas the average earnings on all other freight was 1.017 cents per ton per mile.

The average earnings on all freight was 8.80 mills per ton per mile; that is to say, the Pacific coast lumber was carried for 3.65 mills per ton per mile less than the average of all freight.

In 1906 the average revenue per ton per mile on Pacific coast lumber and shingles was 4.57 mills per ton per mile, a decrease of .58 of a mill per ton per mile. All other freight paid 1.016 cents per ton per mile, and the average of all freight in 1906 was 8.28 mills per ton per mile; that is to say, the average earnings on lumber from the Pacific coast in 1906 was 3.71 mills per ton per mile less than the average earnings on freight per ton per mile.

J. G. Woodworth, Traffic Manager of the Northern Pacific, testified (page 1441) regarding the circumstances existing at the time the 40-cent rate was put into effect.

Woodworth Exhibit No. 5 is a statement taken from the records of the Northern Pacific Company showing actual prices paid for lumber f. o. b. Pacific coast points for the years 1896 to 1907, a period of twelve years.

In 1896 car siding cost $10.00 per 1,000; in 1907, $18.00 per 1,000.

In 1896 car roofing was $8.00 a thousand; in 1907 it was $14.00 per 1,000.

In 1896 car sills cost $7.00 per 1,000; in 1907, $20.00 per 1,000.

Cross ties in 1896 cost 18 cents apiece; in 1907, 50 cents apiece.

Timbers, 12 by 12 inch, 32 feet, in 1896 cost $5.00 per 1,000; in 1907, $12.50 per 1,000.

Stringers, 9x18—32 feet, in 1898, cost $7.00 per 1,000; and in 1907, $14.50 per 1,000.

The significance of this exhibit is that with decreasing revenue per ton mile on the railroad and a constantly increasing percentage of gross earnings required to move business, the railroad had been compelled to pay for different kinds of lumber used in construction, over 100 per cent. increase, and this mostly to the lumber men complainants in this case. The increase in expenses in the lumber business has undoubtedly kept pace with that in the railroad business; but the difference between the lumber interests and the railroads is *that the price of the output of the lumber manufacturer has more than doubled, whereas the revenue of the ton-mile output of the railroad has greatly decreased.*

A. G. Maguire, Assistant General Freight Agent of the Great Northern Railway, testified (page 1476) to certain statements prepared from the records of that company. Those relating to the increases in cost of wages and materials are as follows:

Maguire Exhibit No. 5 (page 1493) is a comparative statement showing increase in wages taking the month of May in the years 1902, 1906 and 1907; also the month of October, 1907. This exhibit is too long to receive extended comment here,

but comparing May, 1902, with October, 1907, on certain selected employes, the following increases appear in percentages.

	Increase Percentages.
Road Engineers,	10 per cent.
Road Firemen, Standard Engines,	15.2
Road Firemen, Moguls,	25
Road Engineers, Consolidation Engines,	30
Hostlers,	37.2
Freight Conductors,	22.2
Freight brakemen,	19.1
Yard Service Locomotive Engineers,	25
Locomotive Firemen,	18.4
Yard Masters,	24.4
Switch Foremen, Day,	29.6
Switch Foremen, Night,	27.6
Switchmen, Day,	28
Switchmen, Night,	25.9
Switch tenders and tower men,	34.9
Agents and operators,	34.3
Station laborers,	19.4
Section foremen,	24.4
Section laborers,	36.2
Foremen, extra gangs,	26.5
Laborers, extra gangs,	32.7
Teams,	30.3
Steam shovel engineers,	26.7
Steam shovel watchmen,	25
Bridge watchmen,	23.8
Master mechanics,	15.5

	Percentages. Increase
Shop foremen,	15.9 per cent
Machinists,	37.5
Machinists helpers,	29.7
Blacksmiths,	30.6
Boilermakers,	39.7
Painters,	21.2
Other shop employes,	24.4
Other round house employes,	30.7
Superintendent's chief clerk,	23.8
Chief dispatchers,	13.8
Trick dispatchers,	16.7
Telegraph line men,	12.4
Telegraph climbers,	18.9
Storekeepers,	22.5
Coal heavers, per month,	18.8
Coal heavers, per day,	72.4

R. B. Miller, General Freight Agent of the O. R. & N. Company, testified (page 1498) to the same effect.

We do not further pursue the quotations of evidence or exhibits from the record relating to increases of cost of labor and materials but turn to the findings of the Commission. Passing the findings of increase in cost of lumber manufacture and selling prices as incident to that industry equally with others, we quote from the Oregon opinion (Vol. A, No. 451, p. 50):

> "The expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials. The in-

creased business has required additional working force and equipment, which has helped to swell the total expenditure, but the extra expense of increased force and added equipment has found reward in increased business."

(Note.—It is difficult to justify this latter conclusion in view of the evidence. To illustrate, if in 1898 it cost the Northern Pacific 14.52 cents for each dollar of earnings to move its business, and in 1907, 21.45 cents out of each dollar of earnings, it would seem that notwithstanding the increase in earnings and in density, the relative cost of moving business had largely increased; or as shown by percentages, that it had increased, in spite of economies resulting from better methods and increased density, 47.73 per cent.)

In the dissenting opinion it is said (p. 63):

"That the cost of railroad operation has greatly increased within the last few years is a matter of common knowledge, and it is unnecessary to more than allude to a fact with which every well-informed person is familiar. I am therefore of the opinion that these conceded and significant changes in conditions warranted the defendants in increasing rates which were understood to be on a very low scale when lumber was worth little more than two-thirds its present value and when railway service was much more cheaply performed."

II.

THE EMPTY CAR MOVEMENT.

Mr. James J. Hill in his testimony stated in concrete form the bearing of the question of the empty

car haul upon the increase in cost of operation, and upon the increase in the cost of handling lumber traffic, when he said, (page 1286):

> "The increased cost of the traffic is the cause of this advance, and the empty car movement is a part of the increased cost. The increased cost is the cause of this advance, and the other is an element of that increased cost."

Commenting upon this subject, he testified (Vol. 4, P 1268):

> "The additional cost of handling the property not only justifies but demands the change. The additional cost is more than the proposed change. Commencing in 1893 the amount of this business moved by the railroads was very little. As late as 1897 I think that on the Great Northern fifteen or twenty cars a day went east. This year at times as high as one hundred and seventy-five or two hundred cars a day have gone east. At times on the Cascade Range, where there is a tunnel nearly three miles long, it is very easy to reach the capacity of the Great Northern Railroad, especially if the wind is blowing from the east. On such occasions it takes that tunnel two or three hours to clear after a train goes through, owing to the length of it. When the cold days come it clears out sooner. We have handled over 200 cars in a day. The superintendent said 125 cars a day was the capacity. I did not believe that was so. We are now building an electric plant, installing electric power and engines, and will use electricity in the tunnel. to avoid that question. We can then handle 300 cars loaded in each direction. That would be 600 cars a day altogether."

And again (page 1277):

> "The average on the Great Northern would not bear much relation to the average on some

portions. Take the average from east of the main range of the Rocky Mountains to the coast. At times there are more empty cars; in the last summer there were more empty cars than there were loads."

And again:

"The reason why I think this is an abnormally low rate is because it brings us less than it costs to furnish the service. I can show that to the Commission now. The average distance between cities is about 2,000 miles, to the coast, just about 2,000 miles. But, during the past summer I had occasion to look it up closely. I found we moved more empty cars over the main range and over the Cascade range west of the point involved in this question than we did loads.

"I do not say that we have to haul all the cars west that come east loaded with lumber, empty. No, I said that we haul about one-half, and sometimes more than one-half of our westbound cars empty. That is to bring lumber back.

"What I wish the Commission to understand is that when we do carry an empty car over there and bring it back, haul it both ways, that we lose from $80 to $100. Under those circumstances I mean to say that we are transporting lumber for less than the cost. Those circumstances very frequently occur. They have occurred every month in the last year, and as high as 60 and 70 and 80 cars a day."

And again:

"I paid a good deal of attention to that at times this summer, and sometimes I would find as many empties going west as loads, and some

days more empties than loads. Any car that moves west empty and comes back with a load of lumber is carried at a loss.

"The empty car movement west causes the increased cost of this traffic. I will explain that. If the west-bound traffic made more empties on the west end than the lumber would load, all the roads would be glad to carry at 40 cents rather than bring the car back with nothing. The increased cost of the traffic is the cause of this advance, and the empty car movement is a part of the increased cost. The increased cost is the cause of this advance and the other is an element of that increased cost."

And again (page 1287):

"I said the lumber movement had increased the cost because of the increased number of cars required to be hauled west empty. The lumber movement has increased since 1898. On our road I should say we were hauling then fifteen to twenty cars. Some days we might have got up to twenty-five. It has increased up to one hundred and fifty to two hundred."

And again (page 1300):

"We have always tried to credit the lumber movement with the supplies that go westward and are needed in that business. We have always tried to impress upon the merchants of the coast the importance of trying to make every empty car good, because it enables us to furnish an empty car to load lumber back, and to pay that much more money out in the country."

Howard Elliott, President of the Northern Pacific, testified (page 1372):

> "The past history of the rate I think has been more or less touched upon here. It was put in, as I understand it, fourteen or fifteen years ago, at a time, when cars on the Pacific coast were not getting any return loads. It was obviously desirable to load those cars back if they could be so loaded."

Again (page 1390):

> "The empty haul west was not the sole cause for this advance in rate. It is one of the causes. I think the advance will put us in a much better position to bear the burden of taking empties, than we were in before. Even on a 50-cent rate, I am not clear with the way our expenses have increased, that we would be justified in hauling empties all the way to the coast in order to get lumber."

We do not pursue the examination of the evidence showing the empty car haul now involved in this east-bound lumber traffic, other than to refer to the testimony of A. G. Maguire and Maguire Exhibit 1, (Vol. 4, p. 1476 et seq.) showing the trend of the empty and loaded car mileage on the Great Northern lines during each year 1893 to 1907. We also direct attention to the table at the foot of the exhibit showing, by actual count, the empty and loaded cars that passed through the Cascade tunnel (on the line in Washington) for six months ended October 31, 1907.

In the month of May, 1907, 29 cars a day passed empty west through the tunnel and two cars a day empty east.

In June there were 66 west-bound empty cars per day and one empty car per day east.

In July there were 89 empty cars per day west to 3 empty cars east.

In August there were 54 empty cars west to two empty cars east.

In September there were 35 empty cars west to four empty cars east.

In October there were thirteen empty cars west to four east.

By the month of September the effect of the financial panic over the country had shown itself upon the volume of the lumber traffic, and from that period on until the end of the year and thereafter, on account of that cause, there was a lighter movement and a consequent lessening of the demand for cars on the coast for lumber loading.

Maguire Exhibit No. 2 (page 1481) contains a statement of the tons of Asiatic import and export tonnage, the chief importance of which at this period may be stated to be that it shows how insignificant as compared to the total tonnage east and west-bound, this foreign tonnage is. The import tonnage calls for empty cars on the coast for east-bound movement, and an examination of the figures relating to it shows how inconsiderable it is and how few the number of cars are that are required to move it east.

FINDINGS OF COMMISSION REGARDING EMPTY CAR HAUL.

Commenting upon the effect of these figures, the Commission in the opinion in the Oregon case, says: (Vol. A, p. 47).

> "The superseded rates were made voluntarily by the carriers, the St. Paul rate having been inaugurated by the Great Northern in 1893, at a time when its empty car movement was east-bound and for the alleged purpose of getting loading east for those empties. The Northern Pacific and other lines in the territory affected by it were obliged to meet that rate in order to handle any of that business. It is shown that now the empty car movement is west-bound, and defendants contend that it is due wholly to the increased output of lumber. Other western products for eastern markets as well as Asiatic import traffic have also increased, and the record does not show what proportion of the predominating west-bound empty car movement is due to increased lumber production."

The Commission again says (p. 58):

> "The defendants urge with great vigor that the empty east-bound car movement prevailing at the time of the establishment of the 40-cent rate was the principal factor influencing the establishment of that rate and as the empty car movement is now west-bound, a condition has arisen which was not contemplated at the time of the establishment of the 40-cent rate. An examination of the records of the various defendants shows that the empty car movement is now west-bound."

Again:

> "The defendants contend that the predominating west-bound car movement is due solely to lumber, while complainants contend that it is not, and while there can be no doubt but what the 40-cent rate was made at a time when the empty car movement was east-bound, yet it would seem from the records that the predominating west-bound car movement cannot be charged wholly to the increased east-bound movement of lumber and forest products."

In case 1329, the Washington case, the Commission again said: (Vol. A. No. 452, p. 53):

> "In the year 1890 there was a decided predominance in the empty car movement eastbound, this amounting at that time to about 161.17 per cent, over the west-bound empty car movement on the Northern Pacific Railway. In 1891 the predominance of the east-bound empty car movement over west-bound had decreased to 72.17 per cent., and in 1892 it had further decreased to 4.35 per cent. The statement submitted by the Northern Pacific Railway shows that in 1893 and during all subsequent years down to 1907 conditions have been reversed and during this entire period there has been a large predominance of the west-bound empty car movement over eastbound."

The fact of the marked reversal of the empty car haul was thus found as a fact. To an extent, the Commission appeared to be unwilling to concede to the lumber traffic, the entire responsibility for this great change in conditions. We do not ask this

Court to weigh controverted questions of fact but merely for the moment to examine the undisputed proof in the following exhibits:

Johnson Exhibit 11,	Vol. 4, p. 1440.
Woodworth Exhibit 6,	" 4. p. 1457.
Maguire Exhibits 2 and 3,	" 4, p. 1481-5.

Referring for instance to Maguire Exhibt 3 (page 1485), Mr. Maguire testified that copper, salmon, silk, matting, lumber and shingles *represent practically all of the large commodities moved eastbound from the coast*, and that in order to make a comparison of the earnings per car in making up his Exhibit 3, he took *all of the cars of copper* that moved from Crofton, on British Columbia Island, between January 1st and September 30, 1907, amounting only to 18; that he took *all of the salmon from all points*, in the month of September, 1907, amounting only to 59 cars; *all of the copper* from Grand Forks, British Columbia, from April 1 to September 30, 1907, amounted to only 54 cars; *all of the silk* from Asia from April 1 to September 30, amounted to but 42 cars; *all of the matting from Asia* from January, 1907, to November 22, 1907, amounted to but 100 cars. As against this meager movement of the principal eastbound commodities there were *in the month of August, 1907*, 546 cars of lumber, and 1280 cars of shingles through to Minnesota Transfer. It is difficult in view of these figures, to understand why the rec-

ord does not show with substantial accuracy the relation between the different commodities that moved eastbound; and why it does not show 'what proportion of the predominating westbound empty car movement is due to lumber production.'

The facts in these exhibits were shown in another form at the hearing before the Master in order to more clearly show the percentage relation between eastbound lumber and all other eastbound commodities on the Northern Pacific and Great Northern lines.

Johnson Exhibit 25 (Vol. 2, p. 603):

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING TONNAGE OF LONG HAUL LUMBER AND SHINGLES AND ALL OTHER COMMODITIES SHIPPED EASTBOUND FROM OREGON AND WASHINGTON WITH RELATION OF EACH TO BOTH.

	Tons Carried.	Percent.
Fiscal Year ending June 30, 1904:		
Lumber and Shingles	711,530	85.46%
All Other Commodities ...	121,080	14.54%
	832,610	100%
Fiscal Year ending June 30, 1906:		
Lumber and Shingles 1,117,721		87.64%
All Other Commodities ...	157,648	12.36%
	1,275,369	100%

St. Paul, Minn., April 26th, 1909.

This exhibit is worked out upon the basis of tons and shows that for the year ending June 30, 1906, nearly 88% of the eastbound tons carried was lumber.

Great Northern Exhibit 27 (Vol. 2, p. 613):

GREAT NORTHERN RAILWAY COMPANY.

STATEMENT OF LOADS EASTBOUND THROUGH CASCADE TUNNEL FROM MAY, 1907, TO OCTOBER, 1907, INCLUSIVE, DIVIDED BETWEEN LUMBER, SHINGLES, FOREST PRODUCTS, ETC., AND OTHER COMMODITIES AND THE PERCENTAGE THAT LUMBER, ETC., BEARS TO THE TOTAL.

Month	Lumber, Shingles, etc.	Other Commodities.	Total Loads.
May, 1907	2,855	834	3,689
June, 1907	3,612	626	4,238
July, 1907	3,671	716	4,387
August, 1907	3,458	777	4,235
September, 1907	2,693	727	3,420
October, 1907	2,774	806	3,380
Total	19,063	4,486	23,549

19,063 Lumber, etc..... 80.95%
4,486 Other Commodities..... 19.05%

23,549 Total 100%

Accounting Department,
Train Statistics Office.
4-7-09.

This exhibit is based upon McGuire's Exhibit No. 1, found on page 1477. The latter exhibit shows by actual count for six months in 1907 the number of east-bound loaded cars that moved through the Cascade tunnel. Great Northern Exhibit No. 27 above is a division of these loaded cars between lumber and shingles and all other commodities, and it shows that over 80% of the total eastbound business of that road is lumber. It is, therefore, plain that the *westbound* loaded cars furnish more than enough empty cars on the Coast for the 19.05% of other commodities which are loaded east, and that it is lumber and shingles and nothing else which make the call for empty cars on the Coast and have reversed the direction of the empty car movement.

The necessary result of these findings of the Commission, coupled with the facts in these authentic records of tonnage and car movement, is to establish the truth of the contention that in the matter of the movement of empty cars to the coast, there has been a marked and heavy increase in cost conditions affecting the traffic and to whatever extent other forms of east-bound traffic have increased, it is beyond dispute that the heavy change has been in the growth of lumber loading.

(Note—The Commission turned to the percentages of total empty car movement, east and west bound, covering the entire systems of these companies in all states and involving

all forms of traffic. These the Commission apparently discarded as of no value in this question of the long west-bound haul to the Coast (Opinion Oregon case, Vol. A, No. 451, p. 59). On the Great Northern, for instance, the total empty car haul percentage is made up of the empty car movement during the grain shipping season to the Dakotas, empty coal cars moving back to the head of the Lakes and St. Paul, and particularly, the constant haul of empty cars in the Mesabe iron ore traffic from Lake Superior back to the ore mines.

Mr. Hill testified (Vol. 4, p. 1277):

> "The average on the Great Northern would not bear much relation to the average on some portions. Take the average from east of the main range of the Rocky Mountains to the Coast. At times there are more empty cars; in the last summer there were more empty cars than there were loads.")

III.

In view, therefore, of the conditions existing in 1893 as contrasted with those established to exist in 1906 and 1907 it will be important to further consider the exact relation of the rate as it was made in 1893, to the changed conditions affecting it in the later years.

Mr. Howard Elliott expressed the matter in his testimony as follows (Vol. 4, p. 1372):

> "At that time (1893), and up to seven or eight or even five years ago, the Northern Pacific Railroad was not taxed beyond its reasonable capacity as a freight carrier, so it was

justified, perhaps, in taking on, what might be called extra business at rates far below the average and in using facilities for the benefit of the patrons of the road, that otherwise would not have been used but might have lain idle."

Mr. Hill testified (page 1284):

"I recall an occasion when Mr. Russell Harding was our superintendent. I think it was in 1897. The expense of operation on the lines west of the Rocky Mountains was very high. I was discussing the question with him, and he said, 'Mr. Hill, if I could have one train a day east from the coast to load our empties, I could make a good deal better showing. If I could have two trains or three trains that would load all our empties; it would make a much better showing.' "

The Commission said (Oregon case Vol. A, No. 451 p 50):

"The density of traffic on the defendant lines has increased to such an extent that it is more than can be advantageously handled on single-track roads."

The master found (Vol. A, No. 451, p. 89):

"Since 1897 the lumber industry of this coast and Spokane territory has developed and increased so rapidly that it has constantly outrun the capacity of the roads to handle it, and these roads have been compelled ever since 1897 to spend vast sums in improvements, extensions and far more powerful equipment in order to keep pace with the ever increasing east-bound traffic from those points. Other

> species of east-bound traffic have also increased but the greatest increase is shown to be in the lumber traffic."

So therefor it is established as a fact that instead of being as once, surplus business, this lumber traffic has now gone to such an extent as to outrun capacity to handle it. It is a familiar rule that expense increases with rapidity when capacity is exceeded.

In the case of *In re Louisville & Nashville Railroad Company*, 1 I. C. C. Rep., 69, the Commission in its earlier days recognized the conditions bearing upon surplus traffic of this character, and the justification, and in fact the duty resting upon the carrier to make very low rates to carry it and thereby encourage the movement. The Commmission said:

> "It was shown by the evidence that the rates upon long hauls were such as would admit of the pine lumber of Mississippi being sold in Wisconsin in competition with lumber there cut, and of the iron of Alabama being carried through Pittsburgh to eastern manufactories. If the lines originating in Wisconsin and Pennsylvania give to the products of those states corresponding rates for the traffic in the other direction under similar circumstances, this will prejudice no one; but, on the contrary, may operate to the public advantage, provided always, that the rates actually charged are compensatory. The petitioner in this case claims that in no case does it carry such long

haul traffic at rates which fall below cost. By this, however, is meant only the cost of movement of the particular traffic, leaving out of view the fixed charges of the road, which must, in any event, be provided for, whether the long haul traffic is or is not taken. This distinction between the cost of movement and the fixed charges often becomes of importance in such cases as that of the lumber trade just mentioned. That trade is new; the roads which take it were built without anticipating its springing up, and their managers made their calculations, for business to meet the whole cost of operation in reliance upon such traffic as was then apparent or probable. The fixed charges of the road may, for purpose of illustration, be assumed to equal one-half of the whole, the cost of movement of freight the other half. The rates laid were doubtless calculated to cover the whole, with a margin for profit, and were so laid that all traffic would contribute towards both fixed charges and cost of movement. But now comes this new business, and from the nature of the case low rates are a necessity to it; it can pay perhaps little, if anything, more than half what is paid by other traffic. But taking it will not increase perceptibly the fixed charges of the road, because those are made up of items that must be paid whether the traffic is large or small. What is added to the cost by taking it is simply the expense of its own handling and movement; and upon the supposition made, there might perhaps be gain to the road instead of loss in taking it at anything above half the rates which are levied upon other traffic corresponding to it in classification. It might therefore be carried at such rates without wrong to anyone."

Continuing, the opinion proceeds to state under just what conditions the long haul traffic cannot be accepted, and says:

> "But if it were carried at lower rates still, not only would the other traffic be left to pay the fixed charges and the cost of its own movement, but it would also, to some extent, be burdened with the cost of movement of the long haul traffic thus added to the business of the road."

Again on page 79:

> "Every railroad company ought, when it is practicable, to so arrange its tariffs that the burden upon freights shall be proportional on all portions of its line, and with a view to revenue sufficient to meet all the items of current expense, including the cost of keeping up the road, buildings, and equipment, and of returning a fair profit to owners. But it is obvious that, in some cases, when there is water competition at leading points, it may be impossible to make some portion of the traffic pay its equal proportion of the whole cost. If it can then be made to pay anything toward the cost, above what the taking of it would add to the expense, the railroad ought not, in general, to be forced to reject it, since the surplus, under such circumstances, would be profit. As has been tersely said by M. de la Gournerie, formerly inspector general of bridges and railways in France, a railroad 'ought not to neglect any traffic of a kind that will increase its receipts more than its expenses'; and long haul traffic which can only be had on these terms may sometimes be taken without wronging anyone, when, to carry all traffic, or even the major part of it, at the like rates, would be simply

> ruinous. But we desire to apply generally to every kind of competition herein discussed the observation above made, that when competition leads to the transportation of property below actual cost, fairly computed, it ceases to be legitimate. Fair and reasonable competition is a public benefit; excessive and unreasonable competition is a public injury. Competition is to be regulated, not abolished. To other sections of the law of themselves imply ample authority for its regulation, and, in connection with the fourth section, support the interpretation that it is wholly inadmissible to press competition to a point where expenses are increased beyond the increase of income."

In *Schumacher Milling Co. v. C., R. I. & P. Railroad Company*, 4 I. C. C., 373, 378, the Commission said:

> "That a large movement of return empty cars may rightfully under certain circumstances justify a lower rate is undoubtedly true. When articles of traffic do not move on account of a rate which constitutes too great a burden, and the carrier is moving empty cars in the direction in which such articles would naturally move, at a lower rate, the carrier may be justified in carrying at a rate sufficient to bring about their movement, even at a rate barely remunerative. But no extra or additional charge in consequence can justly be put on other articles carried."

The Commission as well as the courts have in numerous other cases expressed the same view of the right of the carrier thus to make use of empty equipment at very low rates; and, in fact, have stated in various ways that it is the duty of a car-

rier to make rates sufficiently low to fill equipment which would otherwise move empty; and there can be no other conclusion from the record in these cases, taking into consideration the character of the competition the Pacific Coast lumber had to meet as a new and untried product, and the low prices then prevailing, that the 40-cent rate then put into effect was considered by both carrier and lumbermen as an abnormally low rate.

The important fact in connection with it, however, now is the reversal since 1893 of the empty car movement. Every analysis of traffic facts, and every legitimate conclusion drawn from changing conditions points in support to the reasons given for the increase of this rate. In 1893 and for years thereafter this traffic was "extra business." It was then taken on and for some years thereafter was moved without noticeably adding to the cost or bearing upon other traffic. Conditions have been reversed; expense has enormously increased and the excuse for the rate in previous years no longer holds good.

In *Tift* v. *Southern Railway Company*, 10 I. C. C., page 586, the Commission held:

> "It is urged in behalf of the carriers that 'for the transportation of lumber they are compelled to haul a large number of flat cars to mills empty, and that it is a common practice for shippers of lumber to load the cars below their capacity.' These are conditions which are properly taken into account by car-

> riers in fixing rates, and which presumably were considered by the defendants in establishing and maintaining the lower rates so long in force prior to the advance. There is no claim that the hauling of empty cars to the mills and the alleged under-loading originated or had increased at the date of the advance, and had not been previously taken into account."

In the present cases the specific claim, and, proof as well, was made that the hauling of empty cars to the mills *originated long after the rate was put in* and had greatly increased by the time of the advance. It was also proved that this empty movement west-bound *was not taken into account* when the rate was established because the empty movement was then east-bound.

IV

In addition to the foregoing evidence establishing changed conditions, the carriers went further and produced much evidence of the unreasonableness of the old rates, in view of the change in conditions, and of the fairness of the higher scale of November 1st, 1907.

Conceding that there is no exact measure for determining a reasonable rate upon a single article of traffic, there are, nevertheless, persuasive methods of proof upon which the courts have never hesitated in clear cases to act and upon which the Commission customarily acts.

Chicago, Milwaukee & St. Paul Railway Co. vs. Tompkins, 176 U. S 167 : 178.

There are at least three usual and recognized methods of proof of this character and the carrriers produced an ample volume of each.

They offered evidence of witnesses of long and varied railroad experience, such as James J. Hill, and Howard Elliott, who testified at length to the effect stated, and gave their reasons for their opinion.

See evidence of James J. Hill, Vol. 4, pp. 1267 : 1276-8 : 1280 : 1288 : 1294 : 1298.

See evidence of Howard Elliott, Vol. 4, pp. 1372-3-4.

They produced the testimony of lumbermen of wide experience whose testimony met the issue tendered by complainants and fairly showed that the effect of the advanced rates on the industry would not in any way be as claimed.

See testimony of—

D. M. Clough, Vol. 4, p. 300;

J. Poulsen, Vol. 4, p. 1317-18;

C. I. Millard, Vol. 4, p. 1331.

The witness Millard gave a comprehensive analysis of the conditions in effect at and prior to 1893 when the reduced rates were made. He told of the abundance of white pine then being manufactured

and shipped from the northern states of Michigan, Wisconsin and Minnesota and the large volume transported via the Great Lakes and Mississippi river to the treeless states of the middle west. He also developed the conditions under which the yellow pine industry began to ship northward from the southern mills. In speaking of the cheap transportation of lumber and logs via the lakes and rivers from Wisconsin and Michigan, he said (p. 1333):

> "The railroads made very low rates to carry it beyond to supply the treeless states in the west. After the maximum production was reached at Muskegon, Minneapolis was the next center of production, and the fact that logs and lumber could be floated down the Mississippi river at a very low price also increased the desire to manufacture the logs and lumber near the source of supply. The measure of cost from Chippewa Falls or Stillwater to St. Louis on lumber rafted in cribs *did not exceed two cents or two and a half cents a hundred pounds for a thousand mile draft down the river.* The markets of St. Louis were supplied by northern lumber. St. Louis was built of white pine, although we have within a few hundred miles of St. Louis large supplies of southern pine, but until the white pine of the north was nearly exhausted the yellow pine did not become a factor. And the same condition now obtains, inasmuch as by means of the low rates which have been made in the past few years, the western lumber has become a great factor, and is met in the tree-

> less states—Nebraska and Kansas and the Dakotas—by the southern pine in active competition with the northern products."

As a matter of contemporary judgment of railroad traffic men, they showed by the testimony of J. G. Woodworth, Vol. 4, p. 1475, that when the Great Northern Railway Company reduced the rate from the Coast to St. Paul in 1893, to 40 cents per hundred weight, which made the rate to Chicago 50 cents, the Union Pacific lines, reaching from the Coast to Omaha, refused, although for a shorter distance, to meet this reduction. The rates as heretofore shown, prior to 1893, to St. Paul and Omaha were the same. Throughout all of the subsequent years following 1893, lines reaching Omaha from the Northwest have never been willing to go so low and have always maintained a higher rate to Omaha. For a period of time, shortly after 1893 when the Union Pacific lines were in the hands of receivers, a 45 cent rate was in effect from Portland only, to Omaha, but this was later advanced to 50 cents where it continuously remained.

These facts are adverted to by the Commission in the opinion in the Oregon case, Vol. A, No. 451, p. 47.

The carriers also offered evidence showing the character of the rates in question by comparisons with other rates upon the same or other articles of traffic upon the same roads, showing comparative earnings per ton mile and per car. The Wood-

worth and Maguire exhibits, Vol. 4, p. 1433 et seq., and the testimony of these witnesses bears upon these comparisons.

R. B. Miller, General Freight Agent of the Oregon Railroad & Navigation Company, offered similar evidence (Vol 4, p. 1500: 1512.)

Howard Elliott, as heretofore stated, offered a comprehensive analysis and comparison of conditions on these northern lines, with those on the Illinois Central, for the purpose of demonstrating that the rates prescribed in the advanced tariffs of November 1st, 1907, were relatively lower in consideration of the amount of service performed, than rates on yellow pine lumber approved by the Commission in its decision in the Yellow Pine cases, 10 I. C. C. 505: 548. This analysis appears in Elliott's testimony, Vol. 4, p. 1374 et seq.

The carriers also offered evidence, by approximate computations, of cost of transportation. James J. Hill testified, Vol. 4, p. 1280, upon this subject.

R. I. Farrington, Vice-President of the Great Northern Railway Company, Vol. 4, p. 1602, testified to careful computations made to determine the *comparative* increase in cost of transportation, using the calendar years 1895, 1900 and eleven months ending November 30th, 1907, for that purpose. Taking the year 1895 as 100 per cent, he ascertained the approximate cost per freight train mile for the year 1900 to have been 143.82 per cent of 1895 and for the eleven months ended November

30th, 1907, the percentage was 207.7 per cent of 1895. Per freight car mile upon the same basis, the cost in 1900 was 126.19 per cent of 1895, and in 1907 it was 162.77 per cent of 1895. He carefully explained the methods adopted and showed the factors used to have been based upon requirements fixed by the Commission in 1893 for the apportionment of operating expenses between freight and passenger traffic. Having thus obtained the operating expenses on the freight traffic for each of the years used, he divided those expenses by the freight train mileage and the freight car mileage to secure his results. The percentages of increase in cost thus shown, while not establishing actual cost, did establish the relative or comparative increase in cost over the period taken.

In the light of this volume of testimony and the utter absence of effort on the part of the complainants to meet it, it is not surprising that in the dissenting opinions of Chairman Knapp and Commissioner Harlan we find corroboration of the proof of the character of these rates.

In that opinion it was said: (Vol. A, No. 451, p. 63):

> "It is clear to me that the rates in question do not belong to the class of rates originally established on a reasonable basis in the estimation of the carrier, and which therefore ought not to be advanced without convincing reason. In other words, we are not dealing in these cases with the questions of the general

advance in the rates which has been the subject of recent discussions, nor with the ordinary rate situation which has been voluntarily maintained for a period of years, *but with an exceptional instance of rates fixed at a very low figure*, lower than might have been lawfully charged, because peculiar conditions induced the carrier to make rates for the time being on a particular commodity which were below the standard of reasonableness. All the circumstances indicate to my mind that these rates when established were regarded by the carriers, and by the shippers as well, as uncommonly, if not abnormally low, and that both parties apparently anticipated that at a later date they would be advanced."

And again:

"I am therefore of the opinion that these conceded and significant changes in conditions warranted the defendants in increasing rates *which were understood to be on a very low scale* when lumber was worth little more than two-thirds its present value and when railway service was much more cheaply performed."

And again: (p. 64):

"But it appears to me entirely clear that no considerable part, if any, of this surplus resulted from the transportation of lumber to the territory affected by the advance in rates. This statement seems *to be fully confirmed by the fact that the ton mile rates on this lumber were very much less than the average ton mile rates upon all traffic of the defendant lines, including this lumber traffic.* I cannot concede that the unreasonableness of these advanced rates on lumber may be inferred from the show-

ing that aggregate earnings from all traffic could be reduced without apparent injustice to these carriers, when the earnings on lumber under the old rates were extremely moderate and even under the advanced rates are comparatively small."

And finally:

"Taking into account all the transportation conditions, including the haul over two mountain ranges and through a long stretch of territory which furnishes little traffic, I am of the opinion *that even the advanced rates are among the lowest on which any considerable volume of lumber is anywhere moved.* They are the lowest rates, all things considered, which the defendants charge on that commodity, and relatively low in comparison with their rates on other traffic. *The old rates may fairly be regarded as unreasonably low*, even if they did not discriminate against other traffic, and I think the defendants were justified in applying a higher scale of charges."

We have now fairly indicated the state of the record before the Commission on the question of the reasonableness of the rates in question for the service rendered, and assert that, measured by ordinary standards that obtain in courts of justice and that should obtain in hearings before the Commission, the carriers gave "a good reason" for a change and advance in these rates. The proof that it was "a good reason" lies in the fact as asserted that the Commission, in every substantial aspect of the matter, found that the facts upon which the reason rested, were true.

We do not further dwell upon the presumption, if such it be, which is said to arise from the long continuance of a particular scale of rates. The decision of this court in Interstate Commerce Commission against Chicago Great Western Railway Company, 209 U. S. 108, above referred to, defines the rule and it is clear that upon the showing of a good reason, the effect of the continuance of the previous rates becomes of small importance and the issue then stands for determination upon the proof offered for and against the rates in question.

The Commission erred as a matter of law in the weight given to this so-called presumption in the face of convincing proof, and this error is the more apparent when it is observed from the opinions, that the facts supporting the reasons given by the carriers were as stated, substantially found to be true by the Commission.

Finally, we also pass by the other ground taken by the Commission in its opinions, namely, that because of apparent ample revenue from total business and all sources, the advance in these rates was excessive. It will be immediately noticed that while there was a showing before it of gross revenues, operating expenses, net income and financial statistics of a general character, offered by the complainants, there was no evidence offered nor issue tendered by the carriers pertaining to this subject. There was no evidence before the Commission of the present value of the properties

of these companies, and, therefore, no basis for their determination whether revenues were fair and reasonable as a whole. Their observations in this regard were mere matters of passing opinion, without adequate evidence upon which to base them.

The essential criticism, however, upon their action in this regard appears from the fact that, in determining the reasonableness of a rate upon a single commodity, revenue yielded on all traffic can have only a very remote, if any, practical bearing. This is not a question of law in this aspect of the matter, but one of fact; it is rather a question of the probative effect as a matter of fact of such evidence. The peculiar province of the Commission is within the limitations in the Act to regulate Commerce, upon its power, to determine all questions of fact relating to the reasonableness of rates and it is not denied that its determination of controverted questions of fact is not open for review by the courts. The question here is of the probative effect as a matter of fact, of the total earnings from all business, in determining the reasonableness of a rate on a single commodity like lumber. In the cases at bar, as seen from the majority opinion and as commented upon by the dissenting opinion, one of the controlling reasons for the conclusions adopted, was the apparent belief that the reasonableness of these lumber rates

were to be determined in part, at least, from evidence tending to show adequate returns from all business.

It is difficult to reconcile this conclusion with the holding of the Commission in Central Yellow Pine Association vs. Illinois Central R. R. Co., 10 I. C. C. 539, which involved the reasonableness of rates on yellow pine from southern states, in which the Commission said:

> "While the Supreme Court has undertaken to point out 'certain elements' to be considered in determining the reasonableness of an entire system of rates, it has not named any as shedding light upon the reasonableness of a rate on a single commodity like lumber. It is evident that such elements are widely variant in the two cases. Where an entire system of rates is involved, the principal, if not the only question, is, whether the revenue yielded by the rates on all traffic is a fair return on the value of that which is 'employed for the public convenience'—a question, the determination of which, as we have shown, *can have only a very remote, if any practical bearing on the reasonableness of a rate on a single article of traffic.* On the other hand, where the rate on a single article is in issue, the question (which could not arise in the former case), whether the rate is unjustly discriminatory or unduly preferential, may be presented, *and the reasonableness of the rate depends upon the value, volume, and other characteristics affecting the transportation of the particular commodity to which it is applied.*"

And in the same case the Commission recognized the futility of taking the entire financial situation and operations of a carrier into consideration in passing upon a single rate, thus:

> "The rate on one article of traffic may be reasonably high and the carrier fail to earn a fair return on the value of the entire property employed for the public convenience because of unreasonably low rates on other traffic, and vice versa, the rate on one article of traffic may be unremunerative or unreasonably low and the return to the carrier from its entire business may be fair or reasonably high, the deficiency under the rate on the one article of traffic being made up by the rates on the balance of the traffic."

Passing therefore, to the real ground adopted by the Commission for its conclusions, we assert that they were based upon a view that it had the power under the Act to Regulate Commerce, to so adjust these rates as to protect the lumber interests on the Coast and in other districts involved, in the competitive markets in the middle west from the consequence which it was led to believe would flow from the advance in the rates in question, even if the advanced rates amounted to no more than reasonable charges for the service rendered.

The complainants before the Commission were clearly of the opinion that this was the duty of the Commission. The substance of their complaints

hereinbefore quoted shows that this is true. They asserted therein that the industry had been built up upon the faith of a continuance of the old rates and that ruin would follow any advance thereof. They directed their proof in support of these allegations and invited the issue thereon. Their plea was substantially a single one, namely, that it was the duty of the carriers, and of the Commission in exercising its power of regulation, to maintain in effect such rates as would always permit the shipment of their surplus output eastward over three mountain ranges to the treeless and competitive states of the middle west.

As heretofore noted, these cases were but a part of the general issue then pending before the Commission, calling for the establishment of rates upon lumber from the Coast district to all southern and eastern destinations. The decision of this court on February 20th, 1911, in Southern Pacific Company et al against Interstate Commerce Commission, No. 527, October Term, 1910, was the final decision of the issues upon one of the several complaints then before the Commission. The fir lumber in the Willamette Valley, which was the subject of consideration in that case, in its southbound shipment to San Francisco, is the same fir lumber that is the subject of consideration in determining the rates in these cases, for eastbound shipment. As stated in the opinion in the Oregon case, (Vol. A, No. 451, p. 61,) the coast basis of

rates for eastern shipment applies southward from Portland throughout the whole length of the Willamette Valley and beyond, to Medford, Oregon, nearly to the California state line, and the testimony of A. C. Dixon, (Vol. 3 Transcript p. 1052) one of the shippers of that district, supported the finding of the Commission, that lumber moves under these rates eastbound, from as far south as Cottage Grove, 150 miles below Portland. The problem, therefore, before the Commission was essentially the same in each of the cases, and we assert that the conclusions of this court in the so-called Willamette Valley case, upon the record in that case, apply with equal force to the record in these cases. We assert that the record here establishes with equal clearness, that the exertion of the power in these cases by the Commission gives rise to the unavoidable inference that the Commission established these rates in precisely the same manner in which it established the rate to San Francisco.

In the Willamette case, this court stated that the complaint before the Commission in that case gave rise "to the inference that in substance the subject complained of was not intrinsic unreasonableness of the new rate which the railroad companies substituted for the former rate, but the injury it was thought would be suffered from not continuing the old rate in force, an injury arising from circumstances extrinsic to the new rate; that

is, a loss which would be suffered by substituting the higher rate, even if that rate was in and of itself reasonable and just."

The Court examined the state of the record in that case and noted the position of the complainants. It noted that "no proof whatever bearing upon an issue as to the reasonableness of the $5.00 rate (there in issue) for the service to be rendered, was introduced by the complainants." It examined the opinion of the Commission in the light of the complaint and the record, and while it observed that the opinion of the Commission may contain some sentences "which, when segregated from their context, may give some support to the contention that the order was based upon a consideration merely of the intrinsic unreasonableness of the rate which was condemned," the court concluded from a consideration of the opinion as a whole, in the light of the condition of the record, that the conclusion of the Commission was based upon a belief in its power and right under the law to protect the lumber interests of the Willamette Valley from the consequences which it was deemed would arise from a change in the rate without regard to whether the change was only to a just and reasonable charge.

We earnestly contend that a like consideration of the complaints and the record before the Commission in these cases, and the opinions of the Commission thereon, must necessarily lead to the same result. By its answer in these cases the Commis-

sion has asserted that the record in the Willamette Valley case was before it by stipulation, in determining the issues in these cases. In the orders in these cases, the order in the Willamette Valley case is referred to as marking the division of the territory, to which the rates fixed in each of the cases, are intended to apply. The orders were entered at the same time or substantially so; the cases were under consideration contemporaneously and it inevitably follows that the belief entertained by the Commission as to its power in the Willamette case was equally entertained in its disposition of the cases at bar. We assert that the record in these cases evidences no less clearly than in that case, that the same character of power was exercised here as there. Upon each of the grounds stated, we respectfully insist that the Court below was right in the conclusion reached and ask that the decrees be affirmed.

HALE HOLDEN,
Solicitor for Great Northern Railway Co. and Chicago, Burlington & Quincy Railroad Co.

CHARLES DONNELLY,
Solicitor for Northern Pacific Railway Co.

F. C. DILLARD,
Solicitor for Union Pacific R. R. Co., Oregon Railroad & Navigation Co., Oregon Short Line and Southern Pacific Company.

INTERSTATE COMMERCE COMMISSION *v.* UNION PACIFIC RAILROAD COMPANY.

SAME *v.* NORTHERN PACIFIC RAILWAY COMPANY.

SAME *v.* GREAT NORTHERN RAILWAY COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Nos. 451, 452, 453. Argued October 18, 19, 1911.—Decided January 9, 1912.

The Act to Regulate Commerce makes the findings of the Interstate Commerce Commission as to reasonableness of a rate *prima facie* correct. *Cincinnati &c. Ry.* v. *Interstate Commerce Commission*, 206 U. S. 154.

Orders of the Interstate Commerce Commission are final unless beyond the power that the Commission can constitutionally exercise; beyond its statutory power, or based upon a mistake of law.

An order of the Commission, regular on its face, may be set aside if it appears that the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence or without evidence to support its conclusions; or if the authority was exercised in an absolutely unreasonable manner.

This court, in determining the validity of an order of the Interstate Commerce Commission, confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider expediency, nor will it consider facts further than to determine whether there was sufficient evidence to support the order.

Where, as in this case, there is testimony as to value of the roads, amounts expended, dividends, ratio of earnings and expenses, and other matters, there is evidence to support the conclusions and the findings of the Commission on such facts are conclusive.

Reasonableness of railroad rates cannot be proved by categorical answers like those given in regard to value of articles of merchandise; too many elements are involved which require consideration.

Quære: whether the maintenance of an admittedly low rate for a long time raises a presumption of reasonableness because the carriers realized a profit thereon.

An order of the Interstate Commerce Commission is not to be considered by itself alone, but must be considered in the light of all the testimony, and when carriers themselves maintain a ratio of difference, a rate fixed by the Commission maintaining the same ratio of difference cannot be said to be beyond its power.

An order of the Interstate Commerce Commission within its power cannot be held invalid because it appears that possibly the Commission considered other subjects than the reasonableness of the rate; and in this case, *held* that an order fixing a rate on lumber was not invalid because the Commission examined into the effect of the rate on the lumber business and on the industries of the various points affected.

THESE three appeals are brought by the Interstate Commerce Commission from a decree enjoining a reduction of lumber rates named in tariffs filed by the Great Northern, the Northern Pacific and the Union Pacific Railroads.

The tariffs under consideration involve rates on lumber from the coast, Spokane District, and Montana-Oregon points to St. Paul, Omaha and Chicago. It is admitted that the rates on shingles, hemlock, cedar and other forest products have a fixed relation to those on fir lumber, and that the differentials from Spokane and the Montana-Oregon territory have a like fixed relation to those from the coast.

The summary of these very lengthy records will therefore be limited to a statement of those facts bearing directly on the pivotal question as to the validity of the order fixing a rate of forty-five cents per hundred pounds on fir lumber from the coast to St. Paul.

In 1893 the rate, from the coast, on fir lumber, over the two northern lines to St. Paul, was fixed at 40 cents, and since 1901 the rate to Omaha at 50 cents.

In 1907 the three carriers concurrently filed new tariffs, making the rate from the coast to St. Paul 60 cents, to Omaha 55 cents and to Chicago 60 cents. Thereupon

various corporations filed complaints before the Commission, alleging that the proposed rates were unreasonable and would seriously affect the lumber industry. The carriers emphatically denied both of these allegations and, in explanation of the causes leading up to the advance, showed that when the Great Northern was completed to the coast, about 1893, almost all of the freight shipped over its line went from the east to the west—cars being hauled back empty to St. Paul, its eastern terminus. In order to correct this expensive and unremunerative situation, the Great Northern decided to put in a rate on lumber so low that mill men on the Pacific coast might compete with dealers in white and yellow pine, in the Chicago market, 2,500 miles distant. It thereupon reduced the existing rate to 40 cents. That cut was met by the Northern Pacific which also reached St. Paul, but the Union Pacific at that time made no change in its rate. The reduction opened up new markets, and was soon followed by heavy shipments of lumber to the east. The business grew steadily, and prior to the filing of the tariffs in 1907, the empty car movement had been completely reversed—many cars being hauled empty from St. Paul to the coast and returning to the east loaded with lumber.

Traffic increased to such an extent that it became necessary to open up new tunnels, construct additional passing tracks and reduce grades and curves. There was a constant increase in gross earnings, but the carriers contended that there had been such an enormous and disproportionate increase in the cost of operation, that it was absolutely necessary to discontinue the unremunerative 40 cent rate and advance it to 50 cents, which they insisted was just and reasonable.

There was no finding as to the effect on gross earnings which would result from the proposed advance of ten cents. But, as the Great Northern, in one year, hauled 1,765,095,997 tons one mile, equivalent to about 30,000

cars, of the average load of 58,000 pounds, transported 2,000 miles from the coast to St. Paul, the advance of ten cents per hundred, or $58 per car, would represent a gross annual increase, for that company alone, of $1,740,000.

An immense amount of evidence was offered by both parties in support of their respective contentions. The Commission rendered an elaborate opinion (14 I. C. C. 1), and concluded by finding that the old rates were just and reasonable and should be restored to all points on and west of the Pembina line, which ran from the Canadian line almost due south through Fargo, Omaha, to Port Arthur, Texas. As Omaha was on this line, the effect of that part of the order was to prohibit the 55 cent advance, and to restore the old rate of 50 cents to Omaha, which had been in force since 1901. As to rates east of the Pembina line the Commission held that "they might reasonably be somewhat increased, but not more than five cents per hundred, to be graded up so as to reach the maximum increase at . . . St. Paul; . . . the rate from the Missouri river crossings should be graded up, the maximum increase of five cents reached at the Mississippi river. Chicago rates should apply to all points between the Mississippi . . . and Chicago."

The carriers thereupon filed separate bills to enjoin this order, and repeated therein the contentions made before the Commission; averred that the old 40 cent rate to St. Paul and the 50 cent rate to Omaha were not only unremunerative, but proportionately so much lower than rates on other merchandise as to amount to an unjust discrimination; alleged that the prosperous condition of the lumber business did not require or justify a further maintenance of this low rate; and, among other things, insisted (1) that the order was beyond the power of the Commission, because entered without any evidence, or finding, that the rates fixed by the carriers were unjust or unreasonable; and (2) was void because the Commission

erroneously held, as a matter of law, that the long continuance of the old rate, during a period when the carriers' total income was sufficient to pay dividends, raised the presumption that the old rates were reasonable.

The Commission demurred and, in its answer, averred that evidence was introduced showing, and tending to show, that the advanced rates were unreasonable; and that, after a full hearing, it was of opinion that the rates complained of were unreasonable, and entered its order accordingly; that the determination of that question involved the exercise of a discretion committed solely to the Commission, and that the "courts ought not and could not review its judgment, and finding, unless it be made clearly to appear that the orders complained of transcend the pale of legitimate regulation."

The cases were referred to a Master, who reported that the allegations of discrimination were not only too general, but that there was no evidence upon which any ruling could be predicated on that subject; that the substance of the bill was that the rates put in by the Commission were confiscatory, and, as to that, held that the evidence was not sufficient to warrant the court in setting aside so much of the order as restored the rates to, and west of, the Pembina line. There was some evidence that the cost of hauling freight over the Union Pacific was greater than over the northern lines, because it crossed the mountains at a point 2,000 feet higher than they did. But the Master found, as a fact, that the traffic conditions were substantially the same over the three roads, and that the distance from the coast to Omaha was 1,800 miles and to St. Paul 2,052 miles. He thereupon held, as a matter of law, that when the Commission fixed 50 cents as a reasonable rate to Omaha over the shorter route, it necessarily followed that the lower rate of 45 cents, over the longer route to St. Paul, was not only unreasonable but unjust.

And even "though the rate might not be confiscatory,

yet an order which, on its face, is inherently inconsistent with the fundamental principles of rational justice, and perverts the spirit and intent of the Interstate Commerce Act, though in form within the limits of delegated power, is, in fact, beyond those limits and is an unlawful order, and one which results in the taking of property without due process of law." He recommended that the court should enjoin so much of the order as permitted an advance of only five cents to points east of that line.

The Commission, and each of the carriers, filed many exceptions to the report, as to which the Circuit Court passed the following order: "All the exceptions to the report of the Master must be overruled. Those which challenge his finding that the reduction, by the Interstate Commerce Commission, of the 50 cent rate on lumber to St. Paul and other points east of the Pembina line, was arbitrary, and so palpably unjust and unreasonable, and so discriminatory that it was beyond the power of the Commission, are overruled; on the ground that this action of the Commission was beyond its power, or so palpably and gravely unjust and unreasonable as to be beyond the substance, if not beyond the form, of its power."

Mr. Luther M. Walter and *Mr. Jesse C. Adkins* for appellant.

Mr. Hale Holden, with whom *Mr. Charles Donnelly* and *Mr. F. C. Dillard* were on the brief, for appellees.

MR. JUSTICE LAMAR, after making the foregoing statement, delivered the opinion of the court.

These appeals raise the single question as to whether, in making the 45 cent rate, the Commission acted within or beyond its power. As the statute makes its finding *prima facie* correct (*Cincinnati &c. Ry.* v. *Interstate Commerce Commission*, 206 U. S. 142, 154), it will be more con-

venient to consider the case from the standpoint of the carriers, who first insist that the order was void because made without evidence, or finding, that the 50 cent rate was unreasonable.

There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Int. Com. Com.* v. *Ill. Cent.*, 215 U. S. 452, 470; *Southern Pacific* v. *Int. Com. Com.*, 219 U. S. 433; *Int. Com. Com.* v. *Northern Pacific*, 216 U. S. 538, 544; *Int. Com. Com.* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 174.

In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. "The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience." *Ill. Cent.* v. *I. C. C.*, 206 U. S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final;

not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.

2. We proceed, then, to a consideration of the carriers' contention that the order was void because made without any testimony that the 50 cent rate of 1907, to St. Paul, was unreasonable. We find that, as far back as 1893, the rate on fir lumber was reduced to 40 cents, on the theory that after a carrier had been paid for transporting a carload of freight from the east to the west, it was better to haul it back loaded with lumber at 40 cents, thereby earning something, than to take it back empty and get nothing. But if, after the empty car movement had been reversed, the carrier had to be at the expense of hauling cars empty to the west for the purpose of returning them loaded with lumber at the unremunerative rate of 40 cents, there would be a double loss—it got nothing for hauling the empty car from St. Paul to the coast, and it derived no profit for hauling it back at the low rate. They contend that this situation, in connection with the enormous increase in the cost of operation, not only justified but required an advance over the 40 cent rate. And this view of the testimony seems to have been taken by the two commissioners who dissented. If there was no other evidence, the Commission's order could not be sustained.

But these facts do not stand alone. In the first place there was no appeal from the Master's finding that:

"The carriers concede that they are unable to determine the cost of this traffic, in and of itself; and that they are unable to say, with any satisfactory accuracy whether or not they make a profit upon it; but they have all conceded that, in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost."

This concession, of course, does not cover the question at issue, but it does fix a starting point. It establishes an important fact in dealing with the difficult question of determining what is a reasonable rate on a particular article. Where the rates as a whole are under consideration, there is a possibility of deciding, with more or less certainty, whether the total earnings afford a reasonable return. But whether the carrier earned dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate. On the other hand, if the carrier earned no dividend, it would not have warranted an order fixing an unreasonably high rate on such article. But the absence of direct testimony that the 50 cent rate was unreasonably high is unimportant. Neither can any specific effect be given to the statement of witnesses that the 40 cent rate was low. The reasonableness of rates cannot be proved by categorical answers, like those given, where a witness may, in terms, testify that the goods were worth so much per pound, or the services worth so much a day. Too many elements are involved in fixing a rate on a particular article, over a particular road, to warrant reliance on such method of proof. The matter has to be determined by a consideration of many facts.

In this case the Commission had before it many witnesses and volumes of reports, statistics and estimates, including the rates on lumber charged by other roads, and those charged by these carriers on other classes of freight. There was evidence that during the fourteen years, when the 40 cent rate was in force, the carriers had, by proper management and without wasteful economies, kept their properties in a high state of efficiency, and after paying all the costs of operation, maintenance, depreciation, fixed

charges and sinking funds, had been able to pay reasonable dividends.

There was evidence as to the value of the road, the amounts expended in betterments and paid out in dividends, ratio between the increased earnings and increased expenses, with many tables and estimates tending to show the cost of hauling empty cars, fully loaded cars, and those carrying an average load.

With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive. There was then, under the statute, nothing for the companies to do except to comply with the order—or, act on the suggestion thrown out in the Commission's answer, and apply for a rehearing, in reliance upon its power and duty to modify its order if the new evidence warranted such change.

3. When the bills were filed the carriers insisted that the order was the result of a mistake of law, in that the Commission held that the long maintenance of the 40 cent rate raised a presumption that it was reasonable, because the carriers had been earning a reasonable profit. But we need not consider whether, under such circumstances, the maintenance of the admittedly low rate raised any presumption of reasonableness; or, if so, whether it is not neutralized by the presumption of right conduct by the carrier as primary ratemaker (*Interstate Com. Com.* v. *Chicago &c.*, 209 U. S. 108, 119). For whatever influenced the Commission in restoring the rates to the Pembina line

—as to which there is now no appeal—it is evident that as to points east of that line they did not act on any presumption that the old 40 cent rate was reasonable. On the contrary, they acted directly contrary to any such presumption, and instead of maintaining the old rate, allowed a new and higher rate to St. Paul, permitting an advance of five cents per hundred, or 12½ per cent, or between $500,000 and $1,000,000 per annum, to the Great Northern road alone.

4. And this brings us to a consideration of the Master's finding, approved by the Circuit Court, that in fixing a rate of 45 cents to St. Paul, the order on its face was void because, with traffic conditions over the three roads practically the same, the Commission allowed the high rate of 50 cents to the short route and the low rate of 45 cents to the long route. It was argued that when the Commission had adjudged that a rate of 50 cents for 1,800 miles was reasonable, it was manifestly unreasonable to allow a rate of 45 cents for 2,052 miles, and that such order was so palpably unjust and unreasonable as to be beyond the substance, if not beyond the form, of the Commission's power.

It does not follow, as a matter of law, that rates should be the same for the same distance over two different roads, and this would be especially true if the cost of transportation was greater over the Union Pacific than over the Northern lines because it crossed the mountains 2,000 feet higher than they.

But, with the Master's finding that traffic conditions were practically the same, it might be that the order would appear unreasonable on its face, if it fixed the high rate over the short route and the low rate, with less revenue, per ton, per mile, over the long route. But the order cannot be considered by itself alone. It must be read in the light of the entire record, including the important fact that the carriers themselves, in making their rates, made a similar difference between the long and the short line.

By their own tariffs they clearly show that they did not consider mere distance a controlling factor in fixing the rates now under attack. And this is not exceptional, for it appears that they make rates from basing points to common points, with the result that two cars of lumber, of the same weight, may be shipped from the same place, over the same line, at the same rate to different points, although the distance one car is hauled may be several hundred miles greater than the other.

But the fact that the carriers themselves, in 1893, 1901 and 1907, charged more to Omaha than to St. Paul is a much weightier fact in considering this attack on the order. In making the difference between these two cities the Commission only did what the carriers themselves had done, under their old and new rates. After 1901, the rate to Omaha was 50 cents and the rate to St. Paul, over the longer route was 40 cents. In the 1907 tariff, now under consideration, the rate to Omaha, over the short route, was fixed by them at 55 cents; and that to St. Paul, for the longer route, was fixed at 50 cents. This was a difference of 5 cents in favor of the short route. The Commission made the same difference in favor of the same road.

This difference is supported by what the record shows as to rates to points on the Pembina line. Inasmuch as no appeal was taken from the refusal to enjoin their restoration, we may assume that all parties admit these rates to be reasonable. But there was a difference as to rates to points on this line which shows that the per mile ratio cannot be regarded as a necessary standard. For example, the rate to Omaha, on the lower part of this line was 50 cents, while the rate to points on the northern end was 40 cents. This was a difference of 20 per cent in favor of Omaha, although there was no such difference in the distance. Again, timber shipped from the coast to St. Paul, passed through this 40 cent point on the northern end of

the Pembina line. The distance from the coast to St. Paul was one-eighth greater, and the advance allowed was one-eighth, or five cents over the 40 cent rate.

It is quite true that the carriers may do what they could not be compelled to do. But it is not to be assumed that they made and continued these different rates between these two cities arbitrarily and without reason. It was proper for the Commission to consider the weight and the character of these reasons and the causes which prompted and justified the carriers in charging these different rates. When the Commission maintained the same ratio of difference as that made by the carriers themselves, it cannot be fairly said that such an order was so arbitrary as to be palpably and gravely unjust, and beyond the substance, if not the form, of its power.

5. A final point remains to be considered, although it involves an issue not presented by the pleadings, not included in the Master's report and not passed on by the Circuit Court. It is, however, argued that on this appeal the record may be searched and the decree affirmed because, in making its order, the Commission was influenced solely by a consideration of the effect of the advance in rates on the lumber industry.

It does appear that the lumber men, in their complaints before the Commission, alleged that the advanced rates were unreasonable; and, apparently on the theory that the injurious effect on their business would sustain that contention, they alleged that the new rate would destroy the lumber industry. Issue seems to have been joined on both propositions, and there were mutual criminations and recriminations of prosperity—the lumber men insisting that the railroads had made large profits under the old rate, and did not need the advance, which would destroy the ability of the lumber men to ship lumber to the east.

The carriers, on the other hand, contended that the 40 cent rate had opened up new markets and developed the

lumber business to a point where it had become enormously profitable, and would continue so under the advanced rates, because white pine had practically disappeared from the market, and that the increased price of lumber more than made up for the increased cost of timber and labor.

It is true, also, that the Commission examined into the effect of the old and the new rate on carrier and lumber men alike. But we do not find that it made the order because of the effect on the lumber industry. In the *Willamette Case* (219 U. S. 445), counsel for the mill men admitted that the rate there under attack was reasonable in and of itself, but insisted that statements of officers and action of the carrier operated to estop the road from raising a low rate up to a reasonable rate.

Nothing of the sort is found here. The rates were attacked as unreasonable, and, on evidence already referred to, the Commission found that the old rates to the Pembina line were reasonable and could not be changed, but that there might be a reasonable increase to points east of that line, not to exceed five cents.

While there is language in the opinion which, looked at alone, might suggest that the Commission was attempting to decide more than the single question as to what was a reasonable rate, yet, taking the opinion as a whole, it affirmatively appears that the Commission confined itself to the exercise of its statutory powers to fix rates. In its opinion it did discuss the issue of prosperity presented by mill men and carriers alike, but held (p. 14) that—

" . . . This controversy cannot be determined wholly upon the ground that complainants have enjoyed the lower rate for many years and that interests have been built up thereunder, and that loss of business investments, profits and markets will result under the increased rates. It must be determined on the justness or reasonableness of the rates in controversy. . . . If the old

rates were too low to be just and reasonable, complainants [mill men] cannot urge their loss as a ground for maintaining them; if the old rates were just and reasonable, the defendants cannot justify the advance on the ground of the prosperity of the lumber business."

Considering the case as a whole, we cannot say that the order was made because of the effect of the advance on the lumber industry; nor because of a mistake of law as to presumptions arising from the long continuance of the low rate, when the carrier was earning dividends; nor that there was no evidence to support the finding. If so, the Commission acted within its power and, in view of the statute, its lawful orders cannot be enjoined. The decree, therefore, must be

Reversed.